

THE
Attorney's Practice
 IN THE
Court of Common Pleas:
 OR, AN
INTRODUCTION
 TO THE

KNOWLEDGE of the PRACTICE of that
 COURT, as it now stands on the Regulation
 of several late ACTS of PARLIAMENT,
 RULES, and DETERMINATIONS of the
 said COURT.

WITH
 Variety of useful and curious PRECEDENTS in
English, drawn or perused by Counsel; and a
 Complete INDEX to the Whole.

By ROBERT RICHARDSON, Gent.

The Fifth Edition, with Large Additions.

In TWO VOLUMES.

VOL. II.

L O N D O N:

Printed by His Majesty's Law-Printers,
 For B. TOVEY, J. RIVINGTON and SONS, P. URIEL,
 W. OWEN, S. CROWDER, B. LAW, W. FLEXNEY,
 G. ROBINSON, E. BROOKES, S. BLADON, W. STUART,
 T. WHIELDON, and T. WALLER.

1778.



T H E

Attorney's Practice

I N T H E

Court of Common Pleas.

Abatement.

AND the said *E.* in her proper person *Plea in abate*
cometh and defendeth the force and *ment, deft. un*
injury, &c. And prayeth judgment *der coverture*
of the said writ, because she saith, that she *at the time o*
on the day of suing out the said original writ *the writ.*
of the said *R.* was under cover of one *W.*
J. then and yet her husband, and alive, *to*
wit, at *London* afore said, in the parish and
ward afore said; And this she is ready to
verify: Wherefore for that the said *W. J.*
is not named in the said writ, the said *E.*
prayeth judgment of the said writ, and that
the same may be quashed, &c.

And the said *R.* saith, that for the reason *Replication.*
before alledged his said writ ought not to be
quashed, because he saith, that the said *E.*
on the day of suing out the said original writ
/ Vol. II. B of

Traverse.

of. the said *R.* to wit, on the first day of *February* in the — year, &c at *London* aforesaid, in the parish and ward aforesaid, was sole, *Without this*, that the said *E.* on the day of suing out the said original writ of the said *R.* was under cover of the said *W.* *J.* as her husband, as the said *E.* hath above alledged: And this he is ready to verify: Wherefore for that the said *E.* doth not deny the said action of the said *R.* the said *R.* prayeth judgment and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

Rejoinder.

And the said *E.* as at first saith, that she on the day of suing out the said original writ of the said *R.* was under cover of the said *W.* as her husband, as she the said *E.* hath above alledged; and of this she putteth herself upon the country; And the said *R.* likewise, &c. Therefore it is commanded to the sheriff that he cause to come, &c.

Issue.

Another executor, nor named in the writ.

And the said *R.* by *R. R.* his attorney, cometh and defendeth the force, &c. And prayeth judgment of the said writ, because he saith, that the said *C.* in his life-time constituted and appointed him the said *R.* and one *W. C.* to be executors of his testament, and afterwards died, after whose death the said *W.* as executor of the testament of the said *C.* administered divers goods and chattels which were of the said *C.* at the time of his death, to wit, at *Westminster* in the county of *Middlesex* aforesaid, which said *W.* at *Westminster* aforesaid is still in being and alive; and this the said *R.* is ready to verify:

verify: Wherefore for that the said *W.* is not named in the writ aforesaid, the said *R.* prayeth judgment of the said writ, and that the said writ may be quashed, &c.

And the said *T.* saith, that for the reason *Replication.* before alledged his said writ ought not to be quashed, because he saith, that the said *W.* after the death of the said *C.* as executor of the testament of the said *C.* never administered any goods or chattels which were of the said *C.* at the time of his death; and this he prayeth, &c.

And now at this day, *to wit*, Friday next *Imparlance.* after the morrow of the holy *Trinity*, in this same term, to which day the said *P. D.* had leave to imparl, and then to answer, &c. before our lord the king at *Westminster* cometh as well the said *E. P.* by his said attorney, as the said *P.* by *J. G.* his attorney, and the said *P.* defendeth the force and injury when, &c. And prayeth oyer of the said writing; *Oyer.* and it is read to him in these words, *to wit*, To all, &c. Which being read and heard, *Plea in abatement, variance between the declaration and deed.* the said *P.* prayeth judgment of the said original writ sued out against him, because he saith, that in the said writ there is material variance between the said writ and the said writing upon which the said declaration is founded, as to the court here sufficiently appeareth; and this he is ready to verify: Wherefore for that variance the said *P.* prayeth judgment of the said writ, and that the said writ may be quashed, &c.

Plea in abatement in case for assumpsit, defendant in fra ætatem.

And the said *W.* in his proper person cometh and defendeth the force and injury above laid to his charge, and prayeth judgment of the said writ, because he saith, that he the said *W.* now is within the age of 21 years, (that is to say) of the age of 18 years, and no more, and was at that age, and no more, at the time of making those promises and undertakings, as by the aforesaid declaration of the said *T.* in manner and form aforesaid is declared: Wherefore the said *W.* prayeth judgment of the said writ, and that the same may be quashed, &c.

Replication for necessities.

And the said *T.* saith, he ought not to be precluded from his said action against him the said *W.* because he saith, that the said money so paid, laid out and expended, and the said several businesses by him the said *T.* done and performed for the said *W.* was necessarily paid, laid out, expended, done and performed for the necessary use and benefit of the said *W.* and in no other manner, as in the declaration of him the said *T.* in manner and form as above is declared: And this he prayeth may be inquired of by the country, &c.

Plea in abatement, misnomer in the defendant's Christian name.

And John S. against whom the writ aforesaid issued by the name of *T. S.* in his proper person cometh and saith, that he was baptized by the name of *John*, and at the time of the said *A.*'s suing out the said original writ was, and always before and since hath been called and known by the said name of *John S.* that is to say, at *W.* aforesaid in the county of *M.* aforesaid; without that

) that he at the time of the said *A's* suing out his said original writ, or any time before or since, hath been or now is called by the name of *Thomas S.* as by the said writ is above supposed; and this he is ready to verify: Wherefore he prayeth judgment of the said writ, and that the said writ may be quashed, &c.
J. Burland.

And the said *Philip Beach* in his own person cometh and prayeth judgment of the original writ of the said *Ambrose*, because he saith, that by the statute of additions made and provided, every defendant in every writ in which process of outlawry lieth, ought to be named and called in such writ of a certain mystery or degree, whereof such defendant is, or at the time of obtaining such writ was, or before had been; and this he is ready to verify: Wherefore, in as much as the said *Philip* by the said original writ is not called or named of any degree or mystery whatsoever, he the said *Philip* prayeth judgment of the said writ, and that the same may be quashed, &c.
G. Wilson.

Plea in abatement the want of addition.

And the said *T.* in his proper person cometh and saith that he is, and long before the day of suing out the original writ of the said *W.* and at the same time was, and ever since hath been one of the clerks of *G. C.* esq; one of the prothonotaries of the court of our lord the king of the bench at *Westminster* in the county of *Middlesex*, daily attending in his office in the same court; and that he

Plea in abatement, that defendant is a prothonotary's clerk, and suitable by bill only, and not by writ.

B 3

hath

hath transacted, and doth transact in his said office, divers affairs of the said prothonotary, and of several subjects of our said lord the king, and hath drawn and written, and doth draw and write divers pleas in the same office, and carries on other affairs of the said prothonotary. And the said T. further saith, that by laudable and ancient custom, and according to the custom and law of the land, and the liberties and privileges of the same court, for time past used and approved hitherto, it has obtained, that all clerks of the prothonotaries or the court of our lord the king of the bench, exercising any affairs in any office of the same prothonotaries in the same court, ought not, and have not for the whole time aforesaid been used, according to the liberties and privileges of the same court of the bench aforesaid, for the whole time aforesaid used and approved, to be drawn or compelled other than in the same court of the bench, to answer before any secular judges, except before the justices of our lord the king of the same bench, by bill to be filed against such clerk in the office of such prothonotary, in which such clerk is, upon any plea or complaints (pleas of freehold, felonies and appeals only excepted); And this the said T. is ready to verify: Wherefore he prays judgment, if he the said T. ought to be compelled to answer to the said declaration, not being a bill filed against him the said T. in the office of the said prothonotary, &c.

Ma^{ty} 14th 17th ;

Maynard v. Pippin. Trin. 12 W.

AND the said E. and S. by W. L. their attorney, come and defend the force and injury, when, &c. and say, that at the time in which the taking the said cattle is supposed to be done, the property of the said cattle was in one S. H. who is now in being and alive, *to wit*, at H. aforesaid, in the county aforesaid; *without this*, that the property of the said cattle at the time of the taking them, was in the said J. M. as he by his writ and declaration aforesaid above supposes; and this they are ready to verify: Wherefore they pray judgment of the said writ and declaration, and a return of the said cattle to be adjudged to them, &c. *And for* having a return of the said cattle, the said E. and S. bailiffs of A. B. and C. B. well acknowledge the taking the said cattle in the said place in which, &c. called H. and justly &c. because they say, that the said place called H. contains, and at the same time, in which the taking the said cattle is supposed to be done, contained in itself forty acres of pasture, with the appurtenances in K. in the county aforesaid; which said forty acres of pasture, with the appurtenances, are, and at the same time in which, &c. were the soil and freehold of the said A. B. and C. B. And because the said cattle at the said time in which, &c. were in the said place called H. aforesaid eating the grass then growing here, and doing damage there, the said E. and S.

Plea in replevin. ro. city in a stranger Lilly's Ent. 358.

Traverse.

Pro return. habend. Cognizance as bailiff, damage feasant.

as bailiffs of the said *A. B.* and *C. B.* well acknowledge the taking the said cattle in the said place in which, &c. and justly, &c. so doing damage there: Wherefore they pray judgment and a return of the said cattle to be adjudged to them, &c.

*Replication,
property in
plaintiff.*

Issue:

And the said *J. M.* says, that his said writ and declaration aforesaid ought not to be quashed, because he says, that the property of the said cattle at the said time of taking them was in the said *J. M.* in manner and form as he by his said writ and declaration has thereupon above alledged, *to wit*, at *H.* aforesaid in the county aforesaid; and he prays that this may be inquired of by the country; And the said *E.* and *S.* do so likewise: It is therefore commanded to the sheriff, that he cause to come, &c.

*Plea, that
def. is a baro-
net, and not a
knight and
baronet.*

Lill. Ent. 5.

*Salk. 50, 6.
Pract. Reg.
2, 3.*

And the said Sir *J. B.* by *J. L.* his attorney comes and defends the force and injury, &c. and prays judgment of the said writ, because he says, that he the said Sir *J.* at the time of suing out the said original writ, and from that time continually afterwards hitherto was, and yet is a baronet only, and not a knight and baronet: *Without* this, that he the said Sir *J. B.* now is, or on the day of suing out the said original writ was a knight and baronet, as by the said original writ is above supposed; and this the said Sir *J.* is ready to verify: Wherefore he prays judgment of the said writ, and that the said writ may be quashed, &c.

*Plea, that de-
fendants were
not married,*

And the said *M.* and *E.* by *A. F.* their attorney, come and defend the force and in-

jury, and pray judgment of the said writ of *according to the*
the said *M.* because they say, that on the *ecclesiastical*
day of suing out the said original writ of the *law.*
said *M.* to wit, on the 23d day of *January* Lill. Ent. 4.
in the 17th year of the reign of our lord the
now king, matrimony was not solemnized
between the said *M.* and *E.* according to See Andr,
the ecclesiastical law of this kingdom of 227.
Great Britain; and this they are ready to
verify: Wherefore they pray judgment of
that writ, and that the said writ may be
quashed, &c. Nash Gross.

And the said *J. C.* in his proper person *Plea that de-*
comes and defends the force and injury, and *endant is an*
says, that he long before the exhibiting the *attorney.*
said bill of the said *D.* and at the same Lill. Ent. 9.
time, and continually afterwards, was and
yet is one of the attornies of the court of
our lord the king of the bench at *Westminster*
in the county of *Middlesex*, as by process un-
der the seal of the same court to this plea an-
nexed more fully appears; and that he prose-
cutes and defends divers pleas and causes of
divers and many subjects of our said lord the
present king in the same court of the bench
aforesaid, as their attorney there: And the
said *J.* says, that he and all other attornies
of the same bench prosecuting and defending
for their clients in the same court, by lauda-
ble and ancient custom, and according to
the law of this kingdom of *England*, and the
liberties and privileges of the same court of
the bench aforesaid, from the time to the con-
trary whereof the memory of man is not,
used

used and approved, ought not. nor at any times past, have been accustomed, according to the liberties and privileges of the said court of the bench aforesaid for the whole time aforesaid used and approved, to be drawn or compelled against their will, to answer before any justices or ministers of our lord the king, or other justices whatsoever in any court, either civil or criminal, of our lord the king or the bench aforesaid at *Westminster*, upon any pleas or pians, (pleas of frank-tenements, and felonies, and appeals only excepted; and this he is ready to verify: Wherefore he prays judgment, if he ought to be compelled to answer the said *D.* to the said plea here in court, &c.

G. Hill.

Bar.

Hill. 17 Geo. 3.

*Plea by an
executrix.*

*Plene admini-
stravit gene-
rally.*

AND the said *E.* by *W. D.* her attorney cometh and defendeth the wrong and injury, when, &c. and saith, that the said *J. P.* ought not to have or maintain his action aforesaid against her. *Because* she saith that she hath fully administred all the goods and chattels which were the said *S. W.*'s at the time of his death in her hands to be administred, nor had she any at the time of issuing the original writ of the said *J.* nor at any time since; and this the said *E.* is

ready to verify: Wherefore she prayeth judgment, if the said *J. P.* ought to have or maintain his said action against her. *And* the said *E.* for a further plea in this behalf, by leave of the court here for this purpose first had and obtained by force of the statute in such cases made and provided, further saith, that the said *J. P.* ought not to have or maintain his said action against her, because she saith, that by a certain Indenture made at *B.* aforesaid, in the life time of the said *S.* *to wit*, upon the 19th day of *November* in the year of our Lord 1776, between the said *S.* by the name of *S. W.* of *W.* in the county of *N.* gent. of the first part, the said *E.* by the name of *E. O.* of *Meers Ashby* in the said county of *N.* widow. of the second part, and *R. H.* (who is since dead) and *T. G.* of the third part, reciting, that whereas a marriage was then shortly to be had and solemnized between the said *S.* and the said *E.* and that the said *E.* being then possessed of several goods, chattels and monies of a considerable value, and being desirous of securing the sum of 300*l.* of good and lawful money of *Great Britain*, to be disposed of according to her last will and testament, writing or otherwise, it was by the said indenture declared and agreed by and between all the said parties to the said indenture, that the said sum of 300*l.* should, after the said indented marriage should take effect, be raised in a convenient time out of the goods and chattels of the said *S.* or the said *E.* and should be ordered

And a judgment recovered against her in an action of covenant.

The indenture.

dered and disposed of, and be employed to such person or persons, and to and for such use and uses, intents and purposes, as was thereafter mentioned and declared; (that is to say) that the said sum of 300*l.* as soon as raised, should be put out at interest, by the approbation of the said *S.* and the said *E.* during the joint lives of the said *S.* and *E.* and that whensoever the said monies or any part thereof should be paid in, the said monies so paid should be put out again at interest upon such securities as the said *S.* and the said *E.* should approve of, and that the securities to be taken for the same should be made and taken in the names of the said *R.* and *T. G.* in trust for the said *E.* And it was thereby further declared and agreed by and between the said parties to the said indenture, and the said *E.* did thereby declare and agree, that it should and might be lawful to and for the said *S.* to have and receive the interest of the said sum of 300*l.* for the better livelihood and maintenance of the said *S.* and *E.* and their family; and the said *S.* did by the said indenture for himself, his heirs, executors and administrators, covenant, grant and agree to and with the said *R.* and *T. G.* their executors and administrators, and to and with every of them, that the said sum of 300*l.* and every part thereof, should and might from time to time, and at all times after the death of the said *E.* be paid unto, had, taken and received by such person or persons to whom the said *E.* should at any time or times during her

life-time limit, give, devise, order, appoint or dispose of the same, or any part or parts thereof, either by her last will and testament in writing, or by any other writing purporting to be her last will and testament, or otherwise; And it was by the said indenture further agreed and declared, that if it should happen that the said *E.* should survive the said *S.* her intended husband, that then and in such case, from and immediately after the death of the said *S.* the said sum of 300*l.* and every part thereof, should be accounted the proper monies and estate of the said *E.* and should and might be received and taken by her the said *E.* her executors and administrators, and should and might be employed and disposed of to such person and persons, and to and for such use and uses, intents and purposes, and in such manner and form as she the said *E.* should at any time or times then following during her life think good to limit, appoint, order, give, devise or dispose of the same, or any part or parts thereof, as by the said indenture more fully appeareth. And the said *E.* further saith, that afterwards, *to wit*, on the 1st day of *December* in the year last above mentioned, at *B.* aforesaid, the said marriage was had and solemnized between the said *S.* and the said *E.* and although the said *S.* afterwards, *to wit*, on the same day and year, at *B.* aforesaid, possessed himself of divers goods, chattels, and monies of a considerable value, *to wit*, of the value of 300*l.* which said goods, chattels and monies, at the time of his said intermarriage

*Action brought
thereupon
against defen-
dant.*

termarriage with the said *E.* were the proper goods, chattels and monies of the said *E.* yet the said *E.* saith, that notwithstanding the said marriage took effect as aforesaid, and the said *S.* had possessed himself of the said several goods, chattels and monies as aforesaid, yet the said sum of 300*l.* or any part thereof, hath not hitherto been raised out of the goods and chattels of the said *S.* nor of the said *E.* nor otherwise raised and put out according to the form and effect of the said agreement above mentioned and contained in the said indenture in that respect. And thereupon, the same indenture remaining in full force and virtue not released, and the said 300*l.* or any part thereof, not paid, satisfied or discharged, and the said *T. G.* having survived the said *R.* he the said *T.* in *Hil.* term in the 16th year of the reign of his present majesty, in the court of our said lord the king of the bench here, to wit, at *W.* in the county of *M.* impleaded the said *E.* by the name of *E. W.* late of *W.* in the said county of *N.* widow and executrix of the last will and testament of *S. W.* gent. her late husband, deceased, otherwise lately called *S. W.* of *W.* in the county of *N.* gent. in a plea, that she keep with the said *T.* the covenant made between the said *S.* and the said *R. H.* deceased, and the said *T.* according to the force, form and effect of the indenture aforesaid made between them and the said *E.*

*And judgment
recovered.*

And thereupon such proceedings were had in the same court, that the said *T.* in the said *Hil.* term in the 16th year aforesaid, before
Sir

Sir *J. W.* *knt.* and his companions justices of our said lord the king, of the bench aforesaid, at *W.* aforesaid, by judgment of the said court recovered against the said *E.* as executrix as aforesaid, 300*l.* which were adjudged to the said *T.* by the said court here for his damages which he had sustained by occasion of the said breach or covenant in that behalf to be levied of the goods and chattels which were the goods and chattels of the said *S.* at the time of his death, in the hands of the said *E.* unadministred, whereof she is convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king, of the bench here, *to wit,* at *W.* aforesaid, more fully appeareth; which said judgment still remaineth in its full force, strength and virtue, not reversed nor vacated, nor any wise satisfied. *And the* Plene administravit præter. said *E.* further saith, that she hath fully administred all the goods and chattels which were the said *S.*'s at the time of his death in her hands to be administred, except goods and chattels to the value of 5*l.* and that she hath not, nor had at the time of suing out of the original writ of the said *J.* nor hath ever since had any goods and chattels which were the said *S.*'s at the time of his death in her hands to be administred, except the said goods and chattels to the value of the said 5*l.* which are not sufficient to satisfy the said debt due on the said judgment as aforesaid, and which are subject and liable towards satisfaction thereof; and thus the said *E.* is ready to verify: Wherefore she prayeth judgment,

judgment, if the said J. ought to have or maintain his said action against her, &c.

Wm. Whitaker.

*And the said S. by G. B. his attorney * cometh and defendeth the force and injury when, &c. and saith that the said C. ought not to have or maintain his aforesaid action against him, because he saith that the said original writ of the said C. was sued out on the 23d of April in the 8th year of the reign, &c. and not before; and that he the said S. at any time within six years next before the day of suing out the said original bill, did not undertake in manner and form as the said C. above hath declared against him; and this he is ready to verify: Whereupon he prayeth judgment, if the said C. ought to have or maintain his aforesaid action thereupon against him, &c.*

Plea, Non assumpsit, Non assumpsit infra sex annos, that defendant was a bankrupt, and plaintiff's cause of action accrued before defendant became a bankrupt.

And the said D. by T. B. his attorney cometh and defendeth the force and injury when, &c. and saith, that he did not assume upon himself in manner and form as the said G. above complaineth against him; and of this he putteth himself on the country. And the said G. likewise, &c. And the said D. by leave of this court, according to the form of the statute in that case lately made and provided, further saith, that the said G.

* *Plea Non assumpsit infra sex annos.* Lord chief justice Holt said, that the statute of limitations was one of the best statutes, and that the pleading thereof was no disparagement to any body. 7 Mod. 12.

ought not to have his said action against him the said D. because he saith that he the said D. did not assume upon himself in manner and form as the said G. above complaineth against him, at any time within six years next before the day of obtaining the said original writ of the said G. And this he is ready to verify: Wherefore he prayeth judgment, if the said G. ought to have his said action against him the said D. And the said D. by leave of this court, according to the form of the said statute in that case lately made and provided, further saith, that the said G. ought not to have his said action against the said D. because he saith, that he the said D. since the 14th day of May in the year of our Lord 1729, mentioned in a certain act made in the parliament of his late majesty king George II. held by prorogation on the ——— day of ——— in the year of our Lord 17 ——— intitled, *An act for the better preventing frauds committed by bankrupts*, and during the continuance of the said act, to wit, on the ——— day of ——— in the year of our Lord ——— at W. aforesaid, became a bankrupt, within the intention and meaning of the several statutes made and in force against bankrupts: And the said D. further saith, that the cause of the aforesaid action in the declaration aforesaid above specified, did accrue to the said G. before the time in which he the said D. did as aforesaid become bankrupt: And of this doth put himself upon the country: And the said G. likewise, &c.

*Plea, Non
assumpsit by
two defen-
dants.*

*Issue.
Judgment by
N. and J.
against a third
defendant.*

*Unica taxa-
tio.*

*Venire tam
ad triennium
quam ad in-
quiri.*

*And the said N. and J. by J. H. their at-
torney come and defend the force and inju-
ry when, &c. and say, that they did not un-
dertake in manner and form as the said J.
above complaineth against them: And of
this they put themselves upon the country:
And the said J. likewise, &c. And the said
M. by H. H. his attorney cometh and defen-
deth the force and injury when, &c. and
sayeth nothing in bar or preclusion of the
aforesaid action of the aforesaid J. whereby
the said J. remaineth undefended by the said
M. by reason whereof the said J. ought to
recover against the said M. his damages oc-
casioned by the non-performance of his said
promises and undertakings. But because it
is not known whether or no the said N. and
J. will be convicted of the premises, and if
they shall be convicted, it is convenient and
necessary that there should be only one taxa-
tion of damages for the whole premises in
one writ specified, and those damages ought
to be settled by the jury of the country in
that behalf, let the writ of inquiry of da-
mages aforesaid against the said M. be stay-
ed until the said issue between the said J. and
the said N. and J. shall be determined;
Therefore, as well to try the issue between
the said J. and the said N. and J. above
joined, as also to inquire what damages the
said J. hath sustained by occasion of the pre-
misses aforesaid, the sheriff is commanded
that he cause to come here
twelve free and lawful men of the body of
his county, &c. by whom, &c. and who
are*

are not related to the said *N. I.* or *M.* or to the said *J.* to recognize, &c. because as well, &c.

And the aforesaid *J.* by *J. D.* his attorney *Plea in case* cometh and defendeth the force and injury *Sur assump.* when, &c. and saith that the said *T.* ought *re ovary in the former action* not to have or maintain his said action against him, because he saith, that after the making the said several promises and assumptions in the said declaration mentioned, and before the day of obtaining the original writ of the said *T. to wit,* in the term of *St. Michael* in the present year of the reign of the now king, before *Sir W. D. knz.* and his companions justices of our said lord the king of the bench at *W.* by bill and without writ of the same king, and by the consideration of the said court, the said *T.* recovered against the said *J.* 60*l.* for his damages which he had sustained, as well by reason of the not performing the several promises and assumptions in the said declaration above mentioned, as for his costs and charges by him in his said suit in that behalf laid out and expended, as by the record and process thereof in the said court of our said lord the king of the bench at *W.* being and remaining fully appeareth; *And* the said *J.* averreth, that the promises and assumptions in the said record mentioned, and the promises and assumptions in the said declaration above mentioned, are the same promises and assumptions, and not other or different, and made for the same considerations, and not for other or different; and this the said *J.* is ready

dy to justify : Whereupon he prayeth judgment, if the said *T.* ought to have or maintain his said action thereupon against him, &c.

Replication,

Nul tiel rec.

And the aforesaid *T.* saith, that by any thing alledged by the said *J.* in the above pleading, he ought not to be precluded from having his action aforesaid against the said *J.* because he saith that there is not any such record of the said recovery against the said *J.* at the suit of the said *T.* as he the said *J.* above in pleading hath alledged ; And this he is ready to verify : Whereupon he prayeth judgment, and that his said damages may be adjudged to him, &c.

Rejoinder,

*Quod habetur
talerecordum.*

And the aforesaid *J.* saith, that there is such record of the said judgment, as the said *J.* above in pleading hath alledged : And this he is ready to verify by the said record, and prayeth that the said record may be seen and inspected by the justices here. *And* because the said record is not now to be had here in court, *It is commanded* the said *J.* that he have here the said record on ——— at his own peril, &c. The same day is given as well to the said *T.* as to the said *J.* here,

*Defendant de
fecit de re-
cordo,*

&c. *At which day* come here as well the said *T.* as the said *J.* by their said attornies ; and the said *J.* hath not here the said record, but maketh default ; whereby it sufficiently appeareth to the justices here, that there is not any such record of the said recovery as the said *J.* hath alledged : *Wherefore,* &c.

*Plea in case
Sur assump.
recovery in an-
other action.*

And the said *M.* by *J. B.* his attorney cometh and defendeth the force and injury when, &c. and saith, that the said *R. C.*

his action thereof against the said *M.* ought not to have, because he saith, that he the said *R.* heretofore, that is to say, in *Mich.* term in the 17th year of the reign of our now lord the king impleaded the said *M.* in his said majesty's court of Exchequer before the barons of the said Exchequer (the said court of Exchequer being at that time, and still is, at *W.* in the county of *M.*) in a certain plea of trespass upon the case upon promise for not performing the same promises and undertakings mentioned in the said declaration, and such proceedings were had thereupon in the said court of Exchequer, that the said *R. C.* afterwards, *to wit*, in the same *Mich.* term in the year aforesaid, by the consideration of the said court of Exchequer, recovered against the said *M.* 93 *l.* which to the said *R. C.* in the said court of Exchequer were adjudged for his damages which he sustained, as well on occasion of not performing the same promises and undertakings as are mentioned in the above declaration, as for his costs and charges by him about his suit in that behalf laid out, whereof the said *M.* is convicted, as by the record and proceedings thereof (which our now lord the king, by virtue of his majesty's writ of error by the said *M.* prosecuted of and upon the premisses, hath lately caused to be brought in his said majesty's court of Exchequer chamber at *W.* there to be determined, and which still in the said court of Exchequer remains undetermined) more at

large appeareth, which said judgment still remaineth in its full strength and effect, not in the least reversed, satisfied or annihilated; And this he is ready to verify by that record: Whereof he prayeth judgment, if the said R. C. his said action therefore against him ought to have. &c.

In question, upon the demise of J. B. the defendants pleaded Not guilty; and this plea was prepared at the assizes, but the plaintiff did not proceed, and the plea was not offered.

Plea, Puis darrein cont in execution a release from the lessee of the plaintiff.

And the said T. B. and J. H. in their proper persons come and say, that the justices of our sovereign Lady the queen here ought not to proceed to take the jury aforesaid between the said defendants and the said plaintiff, because they say, after the last continuance of the said plea, *to wit*, after

from which the said plaintiff was last continued here, until this day, *to wit*, on the 15th day of July last past, and before the same 15th day of July, *to wit*, on the 17th day of July last past, the said J. B. by the name of J. B. of E. W. in the parish of E. in the county of York, by his writing, sealed with the seal of the said J. bearing date the same 17th day of July at — aforesaid, remised and released to the said T. and J. and their heirs, all his estate, right and title of and in the said messuages, lands and tenements, in the said declaration mentioned, and also all and all manner of actions and causes of action whatsoever of and concerning the said premises, or any part

part thereof; And this they are ready to verify, &c. Wherefore they pray that the said justices will not proceed further to take the said jury, with this, that the said T. and J. will verify that the said J. J. is made and named plaintiff in the same action only to try the title of the said J. B. to the said tenements.

And the said T. by F. K. his attorney *Pl.a, outlaw-*
cometh and defendeth the force and injury *by in the*
when, &c. and saith, that the said J. ought *plaintiff.*
not to have his aforesaid action against him
the said T. thereon, because he saith that one
C. T. heretofore (that is to say) in *Easter*
term in the 5th year of the reign of his pre-
sent majesty, by an original writ impleaded
the said J. by the name of J. H. late of
London, gent. in the court of the said now
king, before the king himself (the said court
then and still being at *W.* in the county of
M.) in a plea of trespass; and the said T.
because he did not appear in his said majesty's
court before the king himself, to answer unto
the said C. in the aforesaid plea, according
to the law and customs of this realm, was
put in exigent to be outlawed in *London*,
and for that reason afterwards, *to wit*, on
Monday next before the feast of the purifi-
cation of the blessed Virgin *Mary* in the
17th year of the reign of his present majesty,
in the said court of our said lord the now
king, before the king himself, was outlawed
in due form of law at the suit of the said C.
in the aforesaid plea, and still remaineth
outlawed, as by the records and proceedings
thereof

thereof in his said majesty's court, before the king himself at *W.* afore said, returned and now there remaining, may more fully appear; And this he is ready to verify by the said record: Wherefore he prayeth judgment, whether the said *J.* ought to have his said action therefore against him, &c.

Replication, And the said *J.* saith, that he by any
Nul tiel rec. thing by the said *T.* in his plea above alledged, ought not to be barred from his said action against him, because he saith that there is not any such record of outlawry in his said majesty's court, before the king himself, as the said *T.* by his said plea hath alledged; And this he is ready to verify in

Day to bring such manner as the court shall award. And
in the record. the said *T.* is commanded that he have the record here on the morrow of the ascension of our Lord at his peril; And the same day is given to the said *J.* here, &c. At which
Defendant de- day here come as well as the said *J.*, as the said
ficit de re- *T.* by their attornies afore said; and the said
cordo. *T.* hath not here the said record, but maketh default thereof: Wherefore the said *J.* ought to recover, &c.

Plea, the for- And the said *G.* by *R. B.* his attorney
tate of frauds; cometh and defendeth the force and injury
no memoran- when, &c and saith, that the said *J.* ought
um in writ- not to have his said action against him, be-
ing. cause he saith that there is not, nor ever was any memorandum or note in writing of the said promise and undertaking above supposed to be made and signed by the said *G.* or any other person thereunto by him lawfully authorized, according to the form of
the

the statute for preventing frauds and perjuries in such case lately made and provided; And this he is ready to verify: Wherefore he prayeth judgment, if the said *J.* ought to have his said action against him, &c.

And the said *W. T.* by *W. S.* his attorney *Plea setting off* cometh and defenderth the force and injury *a debt.* when, &c. and saith, that the said *J.* and *S.* ought not to have their said action against him, because he saith that the said *J.* and *S.* at the time of suing out the original of the said *J.* and *S.* were and now are indebted to the said *W. T.* in the sum of 50*l.* for meat, drink, washing, lodging, apparel, and other necessities found and provided by the said *W. T.* for the said *S.* while she was sole, at her special instance and request; and also in the further sum of 50*l.* for divers goods, wares and merchandizes sold and delivered by the said *W. T.* to the said *S.* while she was sole, at her like instance and request; and also in the further sum of 50*l.* as well for money by the said *W. T.* to the said *S.* while she was sole, at her request lent and advanced, as for money to the use of the said *S.* while she was sole, at her like request expended, paid and laid out, and for money by the said *S.* while she was sole, of the said *W. T.* had and received; and also in the further sum of 50*l.* as well for divers work, labour, care and diligence of the said *W. T.* by himself, his servants and hortes, for and at the like request of the said *S.* while she was sole, in and about her lawful business done and performed, as for depasturing, feeding

feeding and grazing certain cattle of the said *S.* while she was sole, at her like request depastured fed and grazed by the said *W. T.* which said several sums of 50, 50, 50 and 50 *l.* amount in the whole to the sum of 200 *l.* and are still due and unpaid to the said *W. T.* And the said *W. T.* further saith, that he has been, and still is ready, and doth now offer (according to the form of the statute in this behalf made and provided) to set off against the money which in and by this suit shall appear to be due to the said *J.* and *S.* so much of the said 200 *l.* so as aforesaid due to him the said *W. T.* as shall satisfy such money as appeareth to be due to the said *J.* and *S.* as aforesaid; And this he is ready to verify: Wherefore he prayeth judgment, if the said *J.* and *S.* ought to have their said action against him

Tho. Walker.

*Plea, setting
several s.m.s
as in & by the
bill & answer*

And the said *J.* in his proper person cometh and defendeth the force and injury when, &c. and saith that the said *J.* ought not to have or maintain his said action against him, *because* he saith that the said *J.* on the day of suing out his said original writ against the said *J. to wit,* the 30th day of *May* in the year aforesaid, at *W.* aforesaid in the county aforesaid, was and yet is indebted unto the said *J.* in the sum of 105 *l.* of lawful money of *G. B.* in the manner herein after mentioned; that is to say, the said *J.* on the 29th day of *May* in the year of our Lord 1776, at *W.* in the county aforesaid,

said, made a certain promissory note in writing, and subscribed his name thereto, which said note beareth date the same day and year, whereby the said J. promised to pay to the said J. or order 144*l.* ten days after date thereof, for value received by the said J. of the said J. And the said J. averreth that he made no order for the payment of the said note on the said J. but acknowledgeth that the said J. hath paid him the sum of 110*l.* part of the said note, and the remaining 34*l.* other part, so due and payable from the said J. by the said note to the said J. still remaineth justly due and payable to him; *And also* the said J. afterwards, *to wit*, the 24th day of *July* in the year last mentioned, at *W.* aforesaid in the county aforesaid, made another promissory note in writing, and subscribed his name thereto, which said last mentioned note beareth date the same day, by which said last mentioned note the said J. in six weeks after date thereof promised to pay to the said J. or order, 40*l.* for value received by the said J. of the said J. and the said J. averreth that the said sum of money mentioned in the said last mentioned note, or any part thereof, hath not been paid to him, and that he the said J. hath not made any order for the payment thereof to any other person or persons whatsoever, but the same note still remaineth in his hands unpaid and unsatisfied; *And also* the said J. on the said 30th day of *May* in the year of our Lord 1777 at *W.* aforesaid, in the county aforesaid, was and yet is indebted

debted to the said *J.* in the sum of 31*l.* of lawful money of *G. B.* as well for money before that time expended, laid out and paid, in the soliciting, prosecuting, carrying on and defending of several suits at law and in equity in his present majesty's courts of Exchequer-chamber, King's bench and Common bench at *W.* as for the said *J.*'s fees, care and diligence, in soliciting, prosecuting, carrying on and defending the same for the said *J.* by the said *J.* and at the special instance and request of the said *J.* as also for money lent and paid to the said *J.* by the said *J.* at the like special instance and request of the said *J.* *Which* said several sums of 34*l.* 40*l.* and 31*l.* so due and owing to the said *J.* from the said *J.* as aforesaid, amount in the whole to the sum of 105*l.* *And* the said *J.* is ready, and now offereth to set against the demands of the said *J.* so much thereof as is sufficient to satisfy his said demands in this action, according to the form of the statutes in that case lately made and provided ; *And* this he is ready to verify : Wherefore he prayeth judgment, and that the said *J.* may be barred from having his said action against him, &c.

Wm. Davy.

Mich. 14 Geo. 3.

W. R. against R. B. Debt on a bond for
200 l. dated 24 Nov. 10 Geo. 3.

AND now here at this day, *to wit*, on *Impar lance*,
the octaves of St. *Hilary* in this same
term, until which day the said *Richard* had
licence to imparl, and then to answer,
&c. comes as well the said *William* by
his attorney aforesaid, as the said *Richard* by
Roger Altham his attorney, and the said *Ri-*
chard defendeth the force and injury, when,
&c. and prayeth oyer of the writing afore-
said; and it is read to him; he likewise
prayeth oyer of the condition of the said
writing; and it is read to him in these
words, *to wit*, The condition of this obli-
gation is such, that if the above bounden
Richard B. his heirs, executors, admini-
strators or assigns, shall and do well and
truly pay, or cause to be paid unto the
above named *William R.* his executors, ad-
ministrators or assigns, the full sum of
100 l. of good and lawful money of *Great*
Britain, with lawful interest for the same,
on or before the 24th day of *May* next,
without fraud or further delay; then this
obligation to be void, and of none effect,
or else to remain in full force and virtue;
which being read and heard, the said *Ri-*
chard saith, that the said *William* ought not *Bar.*
to have or maintain his said action thereof
against

*Oyer prayed of
the bond, and
of the condition.*

The condition,

*What due on
the bond.*

against him; because he saith, that at the time of exhibiting the said bill of the said *William* against the said *Richard*, there was due to the said *William* upon and by virtue of the said writing obligatory, the whole principal sum of 100*l.* mentioned in the condition of the said writing obligatory, and the sum of 19*l.* 12*s.* 5*d.* ³/₄ for the interest thereof, and no more, *to wit*, at *London* aforesaid, in the parish and ward

*That plaintiff
indebted to de-
fendant in a
large sum,*

aforesaid. And the said *Richard* further saith, that the said *William* at the time of his exhibiting the said bill against him the said *Richard*, and before, at *London* aforesaid in the parish and ward aforesaid, was and still is indebted to the said *Richard* in a larger sum of money than the monies due from the said *Richard* to the said *William*, upon the said writing obligatory by the

for wheat sold. condition thereof, *to wit*, in the sum of 148*l.* 15*s.* of lawful money of *Great Britain*, for 600 acres of standing wheat before then sold by the said *Richard* to the said *William*, and at the special instance and

*And for goods,
wares and
merchandizes
sold and de-
livered.*

request of the said *William*; and in the further sum of 148*l.* 15*s.* of the like lawful money, for divers goods, wares and merchandizes before then sold and delivered by the said *Richard* to the said *William*, at the special instance and request of the said *William*; which said sums of 148*l.* 15*s.* and 148*l.* 15*s.* do amount together to the sum of 297*l.* 10*s.* of like lawful money; which sum of 297*l.* 10*s.* exceeds the said principal

capital and interest so due on the said writing obligatory mentioned in the said declaration from the said *Richard* to the said *William*; and out of which sum of 297 l. 10 s. the said *Richard* is willing and hereby offereth to allow to the said *William*, all the principal and interest due to the said *William* on the said writing obligatory, according to the form of the statute in such case made and provided; And this he is ready to verify: Wherefore he prayeth judgment whether the said *William* ought to have or maintain his said action thereof against him, &c.

Joseph Sayer.

And the said *William* saith, that by reason of any thing by the aforesaid *Richard* in pleading above alledged, he ought not to be barred from having his said action against the said *Richard*, because he saith, that he the said *William* at the time of suing out his said writ against the said *Richard*, was not nor is indebted to the said *Richard* in the aforesaid several sums of money, or either of them, or any part thereof, in manner and form as the said *Richard* hath in pleading above alledged; And this he prayeth may be inquired of by the country, &c.

John Glyn.

And the said *J. M.* by *W. M.* her attorney, cometh and defendeth the wrong and injury, when, &c. and saith, that she did not undertake and promise in manner and form as the said *T. P.* above declareth against her,

*Plea non
assumpsit.*

Issue.

*Second plea
non assumpsit
infra sex
annos.*

*Third plea of
mutual debts
owing from
plaintiff's ex-
ecutor, and
plaintiff as his
executor, to de-
fendant.*

her; and of this she putteth herself upon the country, &c. And the said *Thomas* doth the like, &c. And the said *J.* by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, further saith, That the said *Thomas* ought not to have his said action against her, because she saith, that she did not promise or undertake in manner and form as the said *Thomas* hath above complained against her, at any time within six years next before the day of suing out the aforesaid writ of him the said *Thomas*; And this she is ready to verify: Wherefore she prayeth judgment if the said *Thomas* ought to have or maintain his aforesaid action against her, &c. And for further plea in this behalf the said *J.* by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case lately made and provided, saith, that the said *Thomas* ought not to have or maintain his aforesaid action against her, because she saith, that the said *J. P.* in his life-time, and at the time of his decease, was indebted to the said *J.* and the said *Thomas* as executor of the last will and testament of the said *J.* as aforesaid, at the time of exhibiting the bill aforesaid, was and still is indebted to the said *J.* in more money than is due or owing from her the said *J.* to the said *Thomas P.* as executor as aforesaid, upon or by reason of the several promises and undertakings in the said declaration mentioned; that

that is to say, in the sum of 400*l.* of lawful money of *Great Britain*, for so much money before that time lent and advanced by the said *J.* to the said *J.* in his life-time, at his request: And also in the further sum of 300*l.* of like lawful money, for so much money before that time paid, laid out and expended by the said *J.* for the said *J.* in his life-time, at his request: And also in the further sum of 400*l.* of like lawful money, for so much money before that time had and received by the said *J.* in his life-time, for the use of the said *J.* And also in the further sum of 200*l.* for work and labour performed and done by the said *J.* and her servants, for the said *J. P.* in his life-time, at his special instance and request, that is to say, at *H.* aforesaid, which said several sums of money are still unpaid to the said *J.* and exceed the money due and owing from the said *J.* to the said *Thomas P.* as executor as aforesaid, upon or by reason of the said several promises and undertakings in the said declaration mentioned, *to wit*, at *H.* aforesaid; and the said *J.* is ready, and now offereth to set off so much of the said several sums so due and owing to the said *J.* as aforesaid, as is sufficient to satisfy the money or damages justly due or payable to the said *Thomas* as executor, as aforesaid, by reason of the said several promises in the said declaration mentioned; And this the said *J.* is ready to verify: And therefore prayeth judgment if the said *Tho-*

mas ought to have or maintain his said action against her, &c. J. Y.

*Replication
quod assumpsit
infra sex
annos.*

And the said *Thomas*, as to the said plea of the said *J.* by her secondly above pleaded in bar, saith, that notwithstanding any thing by the said *J.* in that plea above alledged, he ought not to be barred from having his said action against her, because he saith, that the said *J.* did promise and undertake in manner and form as the said *Thomas* hath above complained against her, within six years next before the day of suing out the said writ of the said *Thomas*, to wit, at *H.* aforesaid; And this he prayeth may be inquired of by the country: *And* the said *J.* doth the like. *And* the said *Thomas*, as to the said plea of the said *J.* by her lastly above pleaded in bar saith, that notwithstanding any thing by the said *J.* in that plea above alledged, he ought not to be barred from having and maintaining his said action against her, because protesting that the said *J. P.* in his life-time, and at the time of his death, was not indebted to the said *J.* in manner and form as the said *J.* hath in and by her said plea above alledged; Nevertheless for replication the said *Thomas* says, that he the said *Thomas*, as executor of the last will and testament of the said *J.* was not nor is indebted to the said *J.* in more money than is due and owing from her the said *J.* to the said *Thomas* as executor, as aforesaid, upon the said several promises and undertakings in the said declaration mentioned,

Issue.

*Replication
(protestando
that the testa-
tor was not in-
debted, &c.)
that plaintiff
as executor is
not indebted to
defendant in
more than is
due from her
so plaintiff as
executor.*

troned, as the said J. hath in and by her said plea in that behalf above alledged; And this he prayeth may be inquired of by the country; And the said J. doth the like, *Issue.* *Ec.* Therefore as well to try this issue, as Venire the said several other issues between the said awarded parties above joined, *Ec.*

And the aforesaid S. by M. H. his attorney cometh and defendeth the force and injury, when, *Ec.* And prayeth oyer of the writing obligatory aforesaid; and it is read to him: He prayeth also oyer of the condition of the same writing obligatory; and it is read to him in these words, *to wit,* The condition, *Ec.* Which being heard and read, the aforesaid S. saith, that he by virtue of the writing obligatory aforesaid ought not to be charged with the debt aforesaid, because he saith, that after the 29th day of September in the year of our Lord 1714, *to wit,* on the aforesaid 17th day of August in the year of our Lord 1774, aforesaid, at W. aforesaid, it was corruptly agreed between the aforesaid J. and the said S. that the said J. should lend to the said S. the sum of 20 l. and should forbear and gave a day of payment thereof until the 12th day of November next ensuing; and that the said S. for the loan of the said 20 l. and for the forbearance and giving a day of payment thereof for the time aforesaid, should give and pay to the said J. the sum of 20 s. a month; and that the said S. should become bound to the said J. in a certain writing obligatory, as a security to the said J. for the payment

of the said sum of 20*l.* according to the form and effect of the corrupt agreement aforesaid; and afterwards, *to wit*, on the aforesaid 17th day of *August* in the year of our Lord 1734, aforesaid, at *W.* aforesaid, the aforesaid *J.* in prosecution of the corrupt agreement aforesaid, did lend to the aforesaid *S.* the aforesaid sum of 20*l.* and the aforesaid writing obligatory, in the declaration aforesaid above mentioned, was thereupon then and there by the said *S.* sealed and delivered to the said *J.* as the deed of the said *S.* as a security for the payment of the said sum of 20*l.* so lent according to the form and effect of the corrupt agreement aforesaid, and the said *S.* in performance and according to the form and effect of the aforesaid corrupt agreement, afterwards, *to wit*, on the 15th day of *November* in the year of our Lord 1774, aforesaid, at *W.* aforesaid, paid to the said *J.* the sum of 20*s.* a month for the loan and forbearance of the aforesaid 20*l.* until the aforesaid 12th day of *November*; and the said *J.* then and there took and accepted of the said *S.* the said sum of 20*s.* a month for the loan and forbearance of the aforesaid 20*l.* until the said 12th day of *November*, which said 20*s.* a month for the loan and forbearance of the said 20*l.* for the said time, exceedeth the rate of 5*l.* for the forbearance of 100*l.* for a year, contrary to the form of the statute in such case made and provided, whereby the writing obligatory in the declaration aforesaid above mentioned, by force and virtue

of the above statute in such case made and provided, is void in law; And this he is ready to verify: Wherefore he prayeth judgment, if the said S. by virtue of the writing obligatory aforesaid, ought to be charged with the debt aforesaid, &c.

And the said J. saith, that he by any *Replication.* thing before alledged ought not to be barred *Lil. Ent. 184.* from having his said action against the said S. because he saith that it was not corruptly agreed between the aforesaid J. and the said S. in manner and form as the said S. hath above in pleading alledged: And this he prayeth may be inquired of by the country, &c. And the said S. doth the like. Therefore, &c.

And the said A. D. by P. L. her attorney *Plea in debt* cometh and defendeth the force and injury, *on a bond, that* when, &c. and saith that she ought not to be charged with the said debt by virtue of the writing aforesaid, because she saith, that *the obligor was non compos mentis.* the said E. D. at the time of the sealing and delivering the said writing mentioned in the said declaration, was not of sound mind, but was *non compos mentis*; And this she is ready to verify: Wherefore she prayeth judgment, if she ought to be charged with the said debt by virtue of the writing aforesaid, &c.

And the said F. N. saith that he, by any *Replication.* thing before alledged by the said A. D. in pleading, ought not to be precluded from having or maintaining his aforesaid action thereupon against her the said A. D. because he saith that the said E. D. at the time of the sealing and delivering of the said writing

mentioned in the said declaration, was of sound mind, and was *compos mentis*, to wit, on the — day of —, in the year of our Lord 1777, aforesaid, in the county aforesaid: and this he prayeth may be inquired of by the country; And the said *A.* likewise. Therefore, &c.

Plea by an heir, in debt on a bond, no lands descended.

And the said *W. H.* by *C. S.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he as son and heir of the said *G.* his father, by virtue of the said writing ought not to be charged with the said debt, because he saith that he the said *W.* on or before the day of suing out the original writ of the said *T.* had not any lands or tenements by hereditary descent from the said *G.* his father in the fee-simple; And this he is ready to verify: Wherefore he prayeth judgment, if he as son and heir of the said *G.* his father, by virtue of the said writing ought to be charged with the said debt, &c.

Replication.

And the said *T. H.* saith, that he by any thing in the said plea alledged ought not to be barred from having his said action against the said *W.* because he saith that the said *W.* on or before the day of suing out the said original writ of the said *T.* had several lands and tenements by hereditary descent from the said *G.* his father in fee-simple, to wit, in the county of *Lincoln*, aforesaid; And this he prayeth may be inquired of by the country: And the said *W.* likewise.

Plea, in debt on a bond, de-

And the said *E.* by *G. N.* his attorney cometh and defendeth the force and injury, when,

when, &c. and saith that the said T. ought *pendant is not*
not to have his aforesaid action against him, *devisee.*
because he saith that he the said E. is not
devisee of the said G. of any lands or tene-
ments of the said G. whereof the said G. at
the time of his decease was seised in fee-sim-
ple in possession, reversion or remainder, or
had power to dispose of the same by his last
will or testament; And this he is ready to
verify: Whereupon he prayeth judgment,
if the said T. ought to have his aforesaid ac-
tion against him, &c.

And the said T. H. as to the aforesaid plea *Replication.*
of the said E. H. by him above pleaded in
bar, saith, that he by any thing therein al-
ledged ought not to be barred from having
his said action against the said E. because he
saith that he the said E. is devisee of the said
G. of several lands and tenements of the said
G. whereof the said G. was seised in fee-
simple, *to wit*, in the county of L. aforesaid:
And this he prayeth may be inquired, &c.

And the said J. M. by ——— his attor- *Plea, bond*
ney cometh and defendeth the force and in- *delivered as an*
jury, when, &c. and saith that the said J. R. *escrow, upon*
ought not to have or maintain his said action *condition.*
thereupon against him, because he saith that *Lil Ent. 186.*
he ought not to be charged with the said *1 Inst. 303.*
debt by virtue of the said writing obliga- *9 Co. 137.*
tory, because he saith that he the said J. M. *1 Salk. 274.*
on the 27th day of May in the 12th year of *Pract. Reg.*
the reign of our late sovereign lord William *317, 540.*
III. late king of England, &c. at London
aforesaid, in the parish of St. Mary le Bow
in the ward of Cheap, made and sealed the
D 4 said

saïd writing, and then and there delivered it to one *E. B.* as an escrow, to be safely kept, upon the condition following, *to wit*, that if the saïd *J. R.* upon the 20th day of *June* in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, should deliver to one *S. B.* one hundred yards of woollen cloth called kerseys, and two hundred yards of linen cloth in good and merchandizable condition, to be exported by the saïd *S.* in the ship called the *Fisher*, to *Virginia* in parts beyond the seas, that then the saïd *J. M.* should deliver the saïd writing obligatory to the saïd *J. R.* as the deed of the saïd *J. M.* otherwise not. *And* the saïd *J. M.* saith, that the saïd *J. R.* upon the 20th day of *June* in the year aforesaid, did not deliver to the saïd *S.* the saïd hundred yards of woollen cloth, or two hundred yards of linen cloth; *And* so the saïd *J. M.* saith, that the saïd writing obligatory brought here into court, by the saïd *J. M.* delivered in form aforesaid, the saïd condition not being performed, is not his deed; *And* this he is ready to verify: Wherefore he prayeth judgment, if the saïd *J. R.* ought to have or maintain his saïd action thereupon against him, &c.

Condition not performed.

Et sic non est factum.

Demurrer.

And the saïd *J. R.* saith, that he, by any thing by the saïd *J. M.* above in pleading alledged, ought not to be precluded from having his saïd action thereupon against the saïd *J. M.* because he saith that the saïd plea above pleaded by the saïd *J. M.* in manner and form aforesaid, and the matter therein

contained, are not sufficient in law to preclude the said *J. R.* from having his said action thereupon against the said *J. M.* to which said plea he the said *J. R.* has no need, and is not bound by the law of the land in any matter to answer; And this he is ready to verify: Wherefore, for default of a sufficient answer in this behalf, he the said *J. R.* prayeth judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him.

And for causes of demurring in law in this behalf the said J. R. according to the form of the statute in such case lately made and provided, sheweth and demonstrateth to the court here, that the said J. M. doth not conclude his said plea to the contrary as he ought, and that the said plea is not issuable, and wanteth form, &c. *Causes of demurrer.*

John Broderick.

And the said J. M. saith, that the said Joinder.
plea by him the said *J. M.* above pleaded in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to preclude the said *J. R.* from having his said action thereupon against him the said *J. M.* which said plea, and the matter therein contained, he the said *J. M.* is ready to verify and prove as the court, &c. And because the said *J. R.* doth not answer to the said plea, and hath not hitherto in any manner denied the same, he the said *J. M.* as before prayeth judgment, and that the said *J. R.* may be barred from having his said action thereupon against him the said *J. M.*
1
&c.

Continuanc. &c. *But* because the court of our said lady the queen now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lady the queen at *W.* until — next after —, to hear judgment of and upon the same premisses, for that the court of our said lady the queen now here is not yet advised thereof.

Bar in debt for rent, as to part, non debet. *Lil. Ent. 164. Pr Reg. 562.* *And* the said *J.* by *G. L.* his attorney cometh and defendeth the force and injury, when, &c. and saith that the said *J.* ought not to have or maintain his said action thereupon against him, because as to the said 13*l.* in the said declaration first mentioned, parcel of the said 26*l.* and also as to 8*l.* 15*s.* and 9*d.* parcel of the said 13*l.* in the said declaration secondly mentioned, residue of the said 26*l.* the said *J.* saith that he doth not owe to the said *J. S.* the said 13*l.* or the said 8*l.* 15*s.* and 9*d.* or any part thereof; And of this the said *J.* putteth himself upon the country: *And* the said *J.* doth so likewise. *And* as to 4*l.* 4*s.* and 3*d.* residue of the said 13*l.* in the said declaration secondly mentioned (the said 13*l.* last specified being the said residue of the said 26*l.* and being the said rent for the said demised premisses in the said declaration secondly specified) the said *J.* saith, that well and true it is, that the said 4*l.* 4*s.* and 3*d.* of the said rent upon the said demise in the said declaration secondly mentioned, at the birth of our Lord Christ in the year of our Lord 1701, aforesaid, were in arrear, and still are in arrear; put

Issue.

As to the residue, a tender.

5 Co. 114.

2 Salk. 622, 624.

Lilly's Entr.

476.

but the said J. further saith, that he the said J. upon the said feast of the birth of our Lord Christ in the year of our Lord 1701, aforesaid, by the space of half an hour next before and until the setting of the sun of the same feast, was ready at the said other house in the said declaration mentioned, and then and there offered to pay to the said J. the said 4*l.* 4*s.* and 3*d.* which he ought to have paid there to the said J. at the said feast, according to the form and effect of the said covenant in that behalf mentioned in the said declaration; and that the said J. or any other lawfully authorized on the behalf of the said J. was not then and there ready to receive of the said J. the said 4*l.* 4*s.* and 3*d.* and that the said J. on the said feast-day, and at all times after the said feast of the birth of our Lord Christ in the said year of our Lord, hitherto was ready, and still is ready to pay to the said J. the said 4*l.* 4*s.* and 3*d.* and he bringeth the same here into court, ready to pay the said J. if he the said J. is willing to receive the same; All and singular which things the said J. is ready to verify, &c. Wherefore he prayeth judgment, if the said J. ought to proceed for damages against the said J.

R. Acherley.

And the said J. by R. S. her attorney *Plea in debt cometh and defendeth the force and injury when, &c. and prayeth oyer of the said bond; and it is read to her, &c. she also prayeth oyer of the condition of the said bond; and it is read to her in these words,*

*on an arbitration bond.
Oyer.*

*No award
made.*

to wit, The condition, &c. which being read and heard, the said *J.* saith that the said *J. A.* ought not to have his said action against her, because she saith that the said arbitrators in the said condition of the said bond named, did not make any award of or upon the premisses in writing indented under their hands and seals, ready to be delivered to the said parties on or before the 29th day of *October* next ensuing the date of the said bond; neither did the said arbitrators chuse any umpire for the ending and composing the differences aforesaid within the time in the condition of the said bond limited in that respect; And thus she is ready to verify: Wherefore she prayeth judgment, if the said *J.* ought to have his said action against her, &c.

W. II. Ashburst.

*Replication,
award set
forth.*

And the said *J.* saith, that he ought not, by reason of any thing above alledged by the said *J.* to be barred from having his said action against her, because he saith, that on the 29th day of *October* in the condition above mentioned, the said *J. W.* and *T. S.* the arbitrators named in the said condition, having taken upon them the burthen of the said award, and having fully examined and duly considered the proofs and allegations of both the said parties, for the settling amity and friendship between them, at the city of *Bath* aforesaid in the county aforesaid, made and published their award and order of and concerning the premisses specified in the
afore-

aforesaid condition, in writing indented under their hands and seals, in manner and form following, (that is to say) That all actions, suits, quarrels, controversies and demands whatsoever had, moved, arisen, and depending between the said parties, for any manner of cause whatsoever, to the day of the date of the said award, should cease, and be no further prosecuted, and that each of the said parties should pay and bear his and her own costs and charges in any wise relating to or concerning the said premisses; And the said arbitrators in and by their said award did further award, order and finally determine, that the said *J. S.* her heirs, executors or administrators, should pay to the said *J. A.* his executors or administrators, the full sum of 29*l.* of good and lawful money of *Great Britain*, without any deduction whatsoever, at one intire payment, on the 30th day of *January* then next ensuing, at eleven o'clock in the forenoon of the same day, in the church-porch of the parish of *W.* in the county of *S.* and lastly the said arbitrators, in and by their said award, did award, order and finally determine, that on payment of the said sum of 29*l.* the said *J. A.* and *J. S.* should in due form of law execute each to the other of them general releases, sufficient in the law for the releasing each to the other of them, his and her heirs, executors and administrators, all actions, suits, arrests, cause and causes of action and suit, quarrels, controversies and demands whatsoever, for, touching or concerning any matter, cause or thing

thing whatsoever, from the beginning of the world until the said — day of — in the year of our Lord — aforesaid, as by the said award now produced here in court more fully appeareth; and the said *J. A.* in fact saith, that although he hath performed and fulfilled every thing specified in the aforesaid award on his part to be performed and fulfilled, nevertheless the said *J.* hath not paid to him the said *J.* the sum of 29*l.* on the said 30th day of *January* next after the date of the said award, which she ought to have paid to him on that day, according to the form and effect of the said award; And this he is ready to verify: Whereupon he prayeth judgment, and his debt, together with his damages by means of the detention of the said debt, to be adjudged unto him.

John Glyn.

Demurrer.

And the said *J.* saith that the replication aforesaid of the said *J.* in manner and form aforesaid above made, and the matter therein contained, are insufficient in law for the said *J.* to have and maintain his said action against her, and that she the said *J.* is not necessitated or obliged by the law to make any answer to the said replication in manner and form aforesaid made; And this she is ready to verify: Wherefore, for want of a sufficient replication in this respect, she the said *J.* prayeth judgment, and that the said *J.* may be barred from having his said action against her, &c.

And

And the said J. for that he in his replication aforesaid hath alledged sufficient matter in law for him the said J. to have and maintain his said action against the said J. which matter he the said J. is ready to verify, and which matter the said J. hath not in any manner denied, nor answered the same, but refuseth to admit the proof thereof, the said J. as before prayeth judgment, and his debt aforesaid, together with his damages by means of detaining the same debt, to be adjudged to him, &c. *Joinder.*

And the said J. S. G. and J. by T. C. their attorney come and defend the force and injury, when, &c. And the said G. and J. say that they are not guilty of the trespass and assault aforesaid, in manner and form as the said J. in his said declaration hath above complained against them; And of this they put themselves upon the country: And the said J. doth the same. And the said J. S. as to the coming with force and arms, or any thing which is against the peace of our present lord the king, and also as to the whole trespass aforesaid, except the said assault on the said J. beating and evilly treating him, saith that he is not guilty thereof, as the said J. above hath complained against him: And thereupon he putteth himself upon the country: And the said J. doth the same. And as to the said assault of the said J. and evilly treating of him, above supposed to be done, the said J. saith that the said J. ought not therefore to have his said action against him, because he saith that before the said time when, *Plea in trespass and assault against three. Two plead Not guilty. The third, as to part, pleads Not guilty. As to the residue, that defendant was master of a ship, and plaintiff opposed and ob-*

*fructed him in
the discharge
of his duty.*

when, &c. and at the said time when, &c. and afterwards, he the said J. S. was master of a certain ship called the *Orford*, and had the conduct, direction and management of the said ship lawfully committed to him, at *London* aforesaid, in the parish and ward aforesaid; and that the said J. at the said time when, &c. at *London* aforesaid, in the parish and ward aforesaid, opposed the said J. and obstructed him in the discharge of his duty as master of the said ship, and so placed himself in the way of the said J. S. that the said J. could not discharge his duty aforesaid without the said J. was removed from the place where he then stood; and the said J. then and there so requested the said J. to remove himself, and to stand out of his way, so that the said J. might discharge his duty aforesaid, which the said J. did not do, but continued to obstruct the said J. and to stand in his way as aforesaid; whereupon, because the said J. would not remove himself and stand out of the way of the said J. at his request, but continued to obstruct him in the discharge of his said duty as aforesaid, he the said J. gently laid his hands on the said J. to cause him to remove and to stand out of his way, for the discharge of the duty of the said J. as master of the said ship as aforesaid; which are the same assault upon the said J. beating and evil treating of him, whereof the said J. hath above against him declared; and this he is ready to verify: Wherefore the said J. S. prayeth judgment, if the said J. ought therefore

therefore to have his said action against him,
Ec.

And the said *J.* by *L. M.* his attorney *Bar in tres-*
 cometh and defendeth the force and injury *pass.*
 when, *Ec.* And as to the coming with force *Prescription*
 and arms, *Ec.* and also the whole trespass *for a way*
 afore said, except the breaking and entering *through the*
 the said close, and treading down and con- *plaintiff's*
 suming the said grass with his feet in walk-
 ing and treading down and consuming other
 grass with his cattle, he saith that he is in
 no hing guilty thereof, as the said *T.* above
 complaineth against him; And of this he
 putteth himself upon the country: And the
 said *T.* doth so likewise. And as to the break-
 ing and entering the said close, and treading
 down and consuming the grass with his feet
 in walking, and treading down and consum-
 ing other grass with his cattle, the said *J.*
 saith that the said *T.* ought not to have his
 said action thereupon against him, because
 he saith that the said close of the said *T.* at
 the said time in which, *Ec.* lay, and still li-
 eth in a certain common field in *Ufborn M.*
 afore said, called *Kirkfield*, lying contiguous
 to a certain common way there called a com-
 mon balk, on the north part, and to a certain
 close in *Ufborn M.* afore said called *Flask-close*,
 on the south part of which said close called
Flask close one *A. B.* long before the time in
 which, *Ec.* was seited in his demelne as of
 fee, and that the said *A. B.* and all those
 whose estate he had in the said close, from
 the time to the contrary whereof the memo-
 ry of man is not, have had, used and en-
 Vol. II. E joyed

joyed a certain way for themselves, their servants, farmers and tenants there, with their cattle, carts and carriages whatsoever, at all times of the year, at their pleasure, from the said common way in, by and thro' the said close in which, &c. to the said close called *Flask-close*, and so back again from the said close, in, by and through the said close in which, &c. into the said common way; and the said *A. B.* being so seised thereof, afterwards and before the said time in which, &c. at *Ufborn M.* aforesaid died, after whose death the said close called *Flask-close* descended to *W. B.* being then and still under the age of 14 years, as son and heir of the said *A. B.* upon which *Frances B.* widow, mother and guardian of the said *W. B.* entered into the said close called *Flask-close*, in the right and to the use of the said *W. B.* and afterwards and before the said time in which, &c. *to wit*, on the ——— day of &c. at *Ufborn M.* aforesaid, the said *F.* demised the said close called *Flask-close* to the said *J.* to hold to the said *J.* and his assigns for the term of one year thence next ensuing, and so from year to year, so long as it should please both parties, by virtue of which demise the said *J.* entered into the said close called *Flask-close*, and was and still is possessed thereof; whereby the said *J.* on the 1st day of *May* in the 29th year aforesaid, and at divers days and times afterwards, and before the 1st day of *June* then next ensuing went from the said common way with his cattle, in, by and through the said close

of

of the said T. to the said Close called *Flask-close*, and so returned back from the same close in, by and through the said close of the said T. into the common way aforesaid, using his said way, doing as little damage as he could in the said close of the said T. which said breaking the said close in which, &c. for the cause aforesaid, and treading down and consuming the said grass with his feet in walking, and with his said cattle in the said close in using the said way, is the same breaking and entering the said close in which, &c. and treading down and consuming the said grass whereof the said T. above complaineth against him; And this he is ready to verify: Wherefore he prayeth judgment, if the said T. ought to have his said action thereupon against him.

And the said G. L. by J. G. the younger his attorney cometh and defendeth the force and injury when, &c. and as to the coming with force and arms, and also the whole trespass aforesaid, except the aforesaid assaulting and beating, saith that he is in nothing guilty thereof; And of this he putteth himself upon the country: And the said G. A. doth so likewise, &c. And as to the residue of the said trespass above supposed to be done, the said G. L. saith that the said G. A. ought not to have his said action thereupon against him, because he saith, that for the space of several months next before the time in which the said trespass is supposed to be done, and also at the said time in which, &c. the said G. L. was master, and the said

Plea, justification of an assault, the defendant being master of a sloop, and the plaintiff a sailor, and refusing to do his duty.

G. A. one of the mariners of a certain ship called the *Union* frigate, which said ship at the time in which, &c. was upon the high sea (*to wit*, at the parish aforesaid) in her voyage which she was making to *Leghorn*, and other places in the *Mediterranean* sea, and from thence back to *London*; and that the said *G. A.* at the said time in which, &c. refusing to do his duty in and about the necessary navigating and governing the said ship in her said voyage, and defying the orders of the said *G. L.* in that behalf, and intending to sow and stir up sedition, tumults and mutiny amongst the other mariners of the said ship against the said *G. L.* being his master as aforesaid, the said *G. L.* that he might keep the said *G. A.* to his duty and obedience, moderately struck the said *G. A.* with his hand, as it was lawful for him to do, which is the same residue of the said trespass whereof the said *G. A.* above complaineth; and thus he is ready to verify: Wherefore the said *G. L.* pray in judgment, if the said *G. A.* ought to have or maintain his said action thereupon against him, &c.

*Pl'a, bar in
trespass, as to
part Not
guilty.*

And the said *B. Ly* — — — his attorney cometh and defendeth the force and injury when, &c. and as to the coming with force and arms, or whatsoever that is against the peace of our lord the present king, as also the whole trespass aforesaid, with the cattle aforesaid, except with one gelding and one mare of the cattle aforesaid, above supposed to be done, the said *B.* saith that he is not guilty thereof; And of this he putteth him-
self

self upon the country : And the said *A.* doth likewise, &c. And as to the residue of *As to residue,*
the said trespass, with the one gelding and *justifies for*
one mare in resaid above supposed to be *common by pre-*
done, the said *A.* saith that the said *A.* ought *scription, as a*
not to have his said action against him, be- *burghs of the*
cause he saith that the said close, and also the *borough of D.*
place in which the said trespass is above sup-
posed to be done, are, and at the same time
in which, &c. were 40 acres of land with *Mellor v.*
the appurtenances in *D.* aforesaid, which said *Wilker, entr.*
40 acres of land with the appurtenances are, *Hil. 21 & 22*
and at the same time in which, &c. and also *Car 2 10.*
from the time to the contrary whereof the *1285.*
memory of man is not, were parcel of a cer- *1 Vent. 21,*
tain common field called *L.* in *D.* aforesaid. *92.*
And the said *B.* further saith, that the bo- *2 Soud 4.*
rough of *D.* in the county of *D.* is an ancient *1 S d. 462.*
borough, and that he the said *B.* is, and *2 Keb. 658.*
at the said time in which, &c. and long be- *676, 858.*
fore, was and still is one of the burgesses of
that borough, and that the burgesses of that
borough, from the time to the contrary
whereof the memory of man is not, until
the 11th day of *July* in the 14th year of the
reign of the lord *Charles* the first, late king
of *England*, &c. were a body politic and
corporate by the name of the bailiffs and bur-
gesses of the borough of *D.* and by that
name used to implead and be impleaded.
And the said *E.* further saith, that in and *Letters patent*
upon the said 11th day of *July* in the 14th
year of the reign of the lord *Charles I.* late
king of *England*, &c. the said lord king
Charles I. by his letters patent made under
his great seal of *England*, bearing date at

Profert.

Westminster the 11th day of *July* in the said 14th year of his reign, constituted and created the bailiffs and burgeses of the borough aforesaid to be from thenceforth for ever a body politic and corporate, by the name of mayor and burgeses of the borough of *D.* in the county of *D.* as by the said letters patent which the said *B.* bringeth here into court more fully appeareth And the said *B.* further saith, that the said bailiffs and burgeses, from the time to the contrary whereof the memory of man is not, until he said 11th day of *July* in the said 14th year of the reign of the said lord *Charles .I.* and the mayor and burgeses of the said borough, upon the said 11th day of *July* in the 14th year aforesaid, and continually afterwards hitherto have had, and for the whole time aforesaid have been used to have, for themselves and every burgess of the said borough, common of pasture in the said field called *L.* whereof, &c. for all their cattle commonable within the said borough of *D.* *levant and couchant, to wit,* in every two years coming together when the said field called *L.* whereof, &c. in which, &c. or any part thereof was sowed with any corn, after the said corn in the said field called *L.* whereof, &c. was mowed and carried away, until the said field or any part thereof was re-sowed with corn, and in every third year when the said field called *L.* whereof, &c. lay fresh and fallow, then for the whole year; *Whereby* the said *B.* on the first day of *August* in the 20th year of the reign of our lord the present

present king, which was the third year in which the said field called *L.* lay fresh and fallow, put his said gelding and mare which were the proper cattle of the said *B.* and levant and couchant within the said borough of *D.* into the said field called *L.* whereof, &c. to eat the grass growing in the same, in using his said common, and with his feet in walking for that cause, and with his said gelding and mare eat up, trod down and consumed the said grass then growing in the said close in which, &c. as it was lawful for him to do, which are the same residue of the said trespass whereof the said *H.* above complaineth against him; *Without this*, that he the said *B.* is guilty of any trespass in the said place in which, &c. with the said gelding and mare, at any time after the said field or any part thereof was in any year sowed with corn, and before the corn in the same year in the said field called *L.* was mowed and carried away; And this he is ready to verify: Wherefore he prayeth judgment if the said *H.* ought to have his said action against him, &c.

And the said *A. W.* and *G. W.* by *T. H.* their attorney come and defend the force and injury when, &c. And as to the coming with force and arms, and all the trespasses aforesaid, except the assaulting, beating and wounding the said *J.* by them supposed to be committed, they say that they are in no wise guilty thereof; And of this they put themselves upon the country: And the said *J. H.* likewise, &c. And as to the assaulting

Plea in assault by two defendants, as to part Not guilty.

Issue. As to the residue, one denying

*endant pleads
Son assult
demaine.*

*The other a
spect 1 Son
assault, viz.
The two ac-
find nts re-
sists, the
plaintiff and
the first defen-
dant were
fighting, the
second defen-
dant to pre-
serve the
peace, and in
defending her
sister, molliter
maius impos-
suit; where-
upon plaintiff
assaulted her,
et sic, &c.*

ing, beating and wounding the said *J.* above
supposed to be committed by the said *A.* And
the said *A.* saith that the said *J.* ought not
to have or maintain his said action against
her for the same, because the truth that the
said *J.* upon the same day and year in the
said declaration above mentioned, at *B.* as re-
said, with force and arms made an assault
upon her the said *A.* and would then and
there have beat, wounded and evil treated
her, for which cause she the said *A.* then
and there defended herself against the said
J. And the said *A.* saith, if any damage
or ill then and there befel the said *J.* the
same was from the proper assault of the said
J. upon the said *A.* and in defence of the
said *A.* And this she is ready to verify:
Wherefore she prayeth judgment, if the said
J. ought to have or maintain his said action
against her for the same. And the said *G.*
as to the assaulting, beating and wounding
of the said *J.* above supposed to be com-
mitted by her, the said *G.* saith that the said
J. ought not to have or maintain his said
action against her for the same, because she
saith, that at the said time when the said
trespass is above supposed to have been com-
mitted by the said *G.* they the said *A.* being
the sister of the said *G.* and the said *J.* with
force and arms, &c. were fighting together,
and would have beat, wounded and evil
treated each other at *B.* aforesaid; whereupon
the said *G.* for preservation of the peace
of his said majesty, and to prevent the said
A. and *J.* from doing bodily hurt to each
other;

ther, and in defence of her said sister, then and there interposed between them, and gently laid her hands on the said J. to part them the said A. and J. from further fighting one with another, and to prevent the said J. from doing bodily hurt to her said sister A. Upon which the said J. then and there with force and arms made an assault upon her the said G. and then and there would have beat, wounded and evil treated her; whereupon the said G. then and there defended herself against the said J. And the said G. saith, that if any damage or ill then and there befel the said J. the same was from the cause aforesaid, and from the assault of the said J. upon her the said G. and in defence of the said G. as aforesaid; And this she is ready to verity: Wherefore she prayeth judgement, if the said J. ought to have or maintain his said action against her for the same

And the said J. as to the plea of the afore-
 said A. as to the aforesaid assaulting, beat-
 ing and wounding of him the said J. by her
 the said A. saith, that by reason of any thing
 by the said A. in her plea aforesaid alledged,
 he ought not to be barred from having his
 action aforesaid against her for the same, be-
 cause he saith that she the said A. of her own
 wrong, and without the cause by her in her
 plea aforesaid alledged, the day and year
 aforesaid, at B. aforesaid, did assault, beat
 and wound him the said J. in manner and
 form as the said J. above complaineth against
 her; And this he prayeth may be inquired
 of

*Replication to
 the plea of the
 first defendant,
 de injuria sua
 propria.*

Issue.

*To the plea of
the second de-
fendant, de
injuria sua
propria.*

of by the country: *And* the said *A.* likewise, &c. *And* the said *J.* as to the plea aforesaid of her the said *G.* as to the said assaulting, beating and wounding of him the said *J.* by her the said *G.* saith, that by reason of any thing by her the said *G.* in her plea aforesaid alledged, he ought not to be barred from having his said action against her for the same, because he saith that she the said *G.* of her own wrong, and without the cause by her in her plea aforesaid alledged, *to wit*, the day and year aforesaid, at *B.* aforesaid, did assault, beat and wound the said *J.* in manner and form as he the said *J.* above complaineth against her; *And* this he likewise prayeth may be inquired of by the country; *And* the said *G.* likewise, &c.

Issue, and Verdict awarded.

Therefore, as well to try that issue, as the several other issues above joined between the said parties, the sheriff, &c.

Assault.

And the said *N.* and *J.* by *H. B.* their attorney come and defend the force and injury when, &c. *And* the said *J.* saith that he is in no wise guilty of the trespass aforesaid, *And* the said *J.* above complaineth against him; *And* of this he putteth himself upon the country: *And* the said *J.* doth the like. *And*

Plea, Not guilty by one defendant.

Issue.

Not guilty, as to part, by the other defendant.

And the said *N.* as to the coming with force and arms, and as to the wounding of the said *J.* and the tearing of her clothes aforesaid above supposed to be committed, saith, that he is in no wise guilty thereof, as the said *J.* above complaineth thereof against him; *And* this he putteth himself upon the country:

And

And the said J. doth the like. And as to the residue of the trespass aforesaid above supposed to be committed, the said N. saith that the said J. ought not to have her aforesaid action against him, because he saith that at the aforesaid time when it is supposed the aforesaid trespass was committed, he was lawfully possessed of a certain messuage, being his dwelling-house in P. in the county aforesaid; and he the said N. being so possessed of the said messuage aforesaid, the said J. without the leave of him the said N. did enter into the aforesaid house, and did tarry there and greatly disturb him in the possession thereof; whereupon the said N. then and there requested the said J. to depart out of the aforesaid house of him the said N. which she then and there wholly refused to do; wherefore the said N. to cause the said J. to depart from thence, did gently lay his hands upon the said J. in the said house to put her out of the said house, and did put her out of the house aforesaid, which are the aforesaid residue of the trespass aforesaid whereof the said J. above complaineth; *As to the residue, plaintiff entered into the defendant's dwelling house and disturbed him in the possession of it, and defendant molter manus imposuit.*

this, that the said N. is guilty of the aforesaid residue of the trespass aforesaid at B. aforesaid, or elsewhere than at P. aforesaid; and this the said N. is ready to verify: Wherefore he prayeth judgment, that the said J. ought to have her aforesaid action against him for the same. *Traverse the place.*

Repliation, *de injuria sua propria.*

And

*Plea in af-
sault and im-
prisonment.*

*As to part,
not guilty.*

Issue.

*As to the rest
due.*

*Defendant is
keeper of the
county gaol of
York*

*Ca ad respon-
dendum issu'd
against plain-
tiff.*

And the said *A.* by *S. F.* his attorney cometh and defendeth the force and injury, when, &c. *And* as to the coming with force and arms, and all the said several trespasses supposed to be done, except the said assault imprisoning, and detaining and keeping in prison of the said *C.* for the time in the declaration aforesaid first above mentioned, supposed to be done, he saith that he is not guilty thereof as the said *C.* above complaineth against him; And of this he putteth himself upon the country, &c. *And* the said *C.* doth the like, &c. *And* as to the said assault, evilly treating, imprisoning, and detaining and keeping in prison of the said *C.* in the declaration aforesaid first above mentioned supposed to be done, the said *A.* saith that the said *C.* ought not to have his action aforesaid against him for the time, because he saith, that long before the time aforesaid in which, &c. and at the same time in which, &c. and continually afterwards hitherto, he the said *A.* was and is keeper of the common gaol of our sovereign lord the king of his county of *Y.* aforesaid, at the castle of *Y.* aforesaid in the said county; And that long before the said time in which, &c. to w^t, in the term of *St. Hilary* in the 11th year of the reign of the lord the now king, a certain writ of *Ca. ad respond.* directed to the then sheriff of the county of *Y.* aforesaid, did issue out of the court of our said lord the king of the bench then being at *W.* in the county of *M.* by which said writ our said sovereign lord the king commanded the

And then Sheriff that he should take the said C. D. and him safely keep, so that he might have his body before the justices of our said lord the king at W. aforesaid, from the day of Easter in fifteen days to answer E. F. in a plea of trespass, and also in a certain plea of trespass on the case, upon promise, to the damage of the said E. 30*l.* Which said writ afterwards, and before the return thereof, *Writ delivered to the sheriff.* to wit, on the 12th day of March in the year last above mentioned, at the castle of X. aforesaid, was delivered to G. H. esq; then sheriff of X. in due form of law to be executed. By virtue of which said writ the said G. H. then being Sheriff of the said county, afterwards, and before the return of the said writ, that is to say, the said 12th day of March in the said year last above mentioned, at the castle of X. aforesaid, the said C. D. in due form of law arrested and took into his custody; And the said C. D. being then in custody of the said sheriff upon the arrest aforesaid, he the said G. H. being then sheriff of the county aforesaid, *Plaintiff committed to the custody of the defendant.* afterwards and before the return of the said writ, to wit, the said 12th day of March in the year last above mentioned, at the castle of X. aforesaid, by his certain warrant under the seal of his office of sheriff of the county of X. aforesaid sealed, and to the said A. then keeper of the goal aforesaid directed, commanded that he the said A. should take into his custody the body of the said C. D. and him safely keep, so that the said sheriff might

might have his body before the said justices of our said lord the king at *W.* from the said day of *Easter* in fifteen days to answer the said *F.* of the said plea of trespass on the case, upon promise, to the damage of the said *E.* 30*l.* By virtue of which said warrant the said *A.* afterwards and before the return of the said writ, *to wit*, the same 12th day of *March* aforesaid, in the year last above mentioned, the said *A.* being then keeper of the said gaol, the said gaol being then at the castle of *Y.* aforesaid, did gently lay his hands upon the said *C.* to take him into his custody in the gaol aforesaid for the cause aforesaid, and him the said *C.* then and there for the cause aforesaid did take into his custody in the gaol aforesaid, by virtue of the said warrant, and according to the duty of his said office did detain for the time in the declaration aforesaid mentioned, that is to say, until such time as he the said *C.* by due course of law was out of the custody of him the said *A.* as gaoler as aforesaid delivered, as it was lawful for him to do, which are the assault, evil treating, imprisoning, and detaining and keeping in prison of the said *C.* by the time aforesaid in the said declaration first above mentioned supposed to be done, whereof the said *C.* above complaineth against him; *Without* this, that the said *A.* is guilty of the said trespass, assault, imprisoning, and detaining and keeping in prison of the said *C.* at any time before the taking and receiving of the said *C.* into the gaol aforesaid, for the cause aforesaid, or at any

Traverse.

any time after his said discharge out of the said gaol as aforesaid; and this he is ready to verify: Wherefore he prayeth judgment, if the said C. ought to have or maintain his action aforesaid against him, &c.

And the said C. as to the said plea of the said A. above pleaded in bar, as to the said assault, evil treating, imprisoning, and detaining and keeping in prison of the said C. above done, saith, that he by any thing before alledged ought not to be barred from having his said action for the same against him, because he saith that he the said A. is guilty of the said trespass, assault, imprisoning, and detaining and keeping in prison of the said C. after his said discharge out of the said gaol in the said plea mentioned, in manner and form as the said C. hath above declared against him; And this he prayeth may be inquired of by the country: And the said A. doth the like. *Therefore, &c.*

Replication, defendant is guilty after plaintiff was discharged.

And the said T. R. by J. G. his attorney cometh and defendeth the force and injury, when, &c. and saith that the said T. G. ought not to have his said action against him, because he saith that the said T. G. at the respective times of speaking of the said respective words so spoken by the said T. R. of the said T. G. as aforesaid, was a sodomite and a buggerer, *to wit*, at S. aforesaid; and therefore he the said T. R. spoke of the said T. G. the said several words above mentioned, as it was lawful for him; And this he is ready to verify: Wherefore he prayeth judgment, if the said T. G. ought

Plea in case for words justifies the words.

ought to have his said action against him, &c.

*Replecion,
de injuria sua
propria.*

And the said T. G. saith, that he by any thing by the said T. R. in pleading above alledged ought not to be precluded from having his action aforesaid against him, because he saith that the said T. R. of his own wrong, without such cause by the said T. R. above in pleading alledged, on the said first day of *May* in the year of our Lord 1777, at S. aforesaid, did say, affirm, declare and publish, of and concerning the said T. G. the said words in the said declaration first above specified, that is to say, You, &c. [as in the declaration] and also afterwards, *to wit*, on the same day and year at S. aforesaid, the said T. R. with a loud voice did speak, rehearse, proclaim, publish and declare of the said T. G. the other words in the said declaration last above specified, that is to say, You, &c. [as in the declaration] in manner and form as the said T. G. hath thereof above declared; And thus he prayeth may be inquired of by the country: And the said T. R. likewise. *Therefore, do*

*Plea of lank-
ruptcy.*

AND the said Robert H. by John I. his attorney cometh and defendeth the wrong and injury, when, &c. and saith that the said Gabriel G. ought not to have his said action against him, because for a general plea in this behalf, according to the form of the statute in such case made and provided, he saith that he the said Robert after the first day of *June* in the year of our

our Lord one thousand seven hundred and seventy-seven, and before the exhibiting the said bill of the said *Gabriel (to wit)* on the thirteenth day of *June* in the year of our Lord one thousand seven hundred and seventy-seven aforesaid, became a bankrupt within the intent and meaning of the several statutes made and in force concerning bankrupts, *(to wit)* at *London* aforesaid in the parish and ward aforesaid, and that the several causes of action aforesaid, and each and every of them did accrue before the time that he the said *Robert* became a bankrupt as aforesaid; And of this he putteth himself upon the * country: *Issue.* And the said *Gabriel* doth likewise the same. *Therefore, &c.*

Nil. 17 Geo. 5.

AND the said *T. C. by G. B.* his attorney *Plea non assumpsit to the* cometh and defendeth the force and injury when, *&c.* And as to the second and third promises and undertakings in the said declaration specified and above supposed to be made, the said *Francis* saith, that he did not undertake and promise in manner and form as the said *W. J.* thereupon above complaineth against him; And of this he putteth himself upon the country: *And the Issue.* *And as to the first* *the statute of* promise and undertaking in the declaration *usury to the*

* This plea ought to conclude to the country, *Nil. Rep. 243, 258. Gilb. Cas. 328. 10 Mod. 243. Barker 236. Fortesc. Rep. 229, 232, 234, 245, 264. 2 Barnard. K. B. 37. And. 176.*

above specified and supposed to be made, the said *Francis* saith, that the said *W.* ought not to have his said action thereupon against him, because he saith, that after the 29th day of *September* in the year of our Lord 1714, *to wit*, on the 25th day of *March* in the year of our Lord 1776, at *London* aforesaid, in the parish and ward aforesaid, it was corruptly agreed between the said *F.* and the said *C. N.* in the said declaration named, that the said *C.* should lend to the said *F.* the sum of 10*l.* 10*s.* and should give day of payment thereof for the space of one month then next ensuing, *to wit*, until the fifth day of *April* in the year of our Lord 1777. And that the said *F.* for the loan of the said 10*l.* 10*s.* and for giving day of payment thereof for the time aforesaid, should give and pay to the said *C.* the sum of 5*s.* upon the said 5th day of *April* in the year last mentioned for the interest and gain thereof, and for giving day of payment of the said 10*l.* 10*s.* which said sum or 5*s.* exceeds the rate of 5*l.* for the interest of 100*l.* for one year, against the form of the statute in such case lately made and provided; And afterwards, *to wit*, on the said 5th day of *March* in the said year of our Lord 1744, at *London* aforesaid, in the parish and ward aforesaid, the said *G.* in pursuance of the said corrupt agreement, did advance and lend to the said *F.* the said sum of 10*l.* 10*s.* And the said *F.* on that occasion did sign and deliver to the said *C.* the said promissory note in the said declaration men-

Stat. 12 Ann.
c. 16.

mentioned; And the said *F.* then and there paid the said sum of 5*s.* for the loan and interest of the said 10*l.* 10*s.* and for giving time for payment thereof for one month, *to wit*, until the said 5th day of *April* in the said year of our Lord 1777, in pursuance of and according to the form and effect of the said corrupt agreement, by means whereof the said promissory note in the said declaration above mentioned, by virtue of the statute in that case made and provided, is void in law; And this he is ready to verify: Wherefore he prayeth judgment if the said *W.* ought therefore to have his said action thereon against him, &c. *Wm. Whitaker.*

Cooke.

Trin. 24 & 25 Geo. 2.

AND the said *J. B.* in his proper person cometh and defendeth the wrong and injury, when, &c. And as to 36*l.* 2*s.* 11*d.* parcel of the said 50*l.* in the said promise and undertaking in the said declaration first mentioned and supposed to be made; And also as to the promises and undertakings in the said declaration, secondly, thirdly, and lastly, above mentioned and supposed to be made, saith, that he did not undertake and promise in manner and form as the said *Mary* above complaineth against him; And of this he putteth himself upon the country:

And the said *Mary* doth likewise the same. *Issue.*

And the said *John* as to 13*l.* 17*s.* 1*d.* residue *As to residue a tender.*

residue of the said 50*l.* in the said promise
 and undertaking in the said declaration first
 mentioned and supposed to be made, saith,
 that the said *Mary* ought not to recover any
 damages by reason of the non-payment of
 the said 13*l.* 17*s.* 1*d.* residue of the said
 50*l.* in the said promise and undertaking in
 the said declaration first mentioned, because
 he saith, that he the said *John* after the
 making of the said first promise and under-
 taking as to the said 13*l.* 17*s.* 1*d.* residue,
 &c. and before the day of exhibiting of the
 bill of the said *M.* against him the said *J.*
to wit, on the said 30th day of *May* in the
 said year of our Lord 1751, at the parish
 of *St. Clement Dones* aforesaid in the said
 county of *Middlesex*, tendered and offered
 to pay to the said *M.* the said 13*l.* 17*s.* 1*d.*
 residue, &c. which said 13*l.* 17*s.* 1*d.* she
 the said *M.* then and there refused to accept
 or receive from the said *J.* And the said
J. further saith, that he the said *J.* always
 from the time of making the said first pro-
 mise and undertaking, as to the said 13*l.*
 17*s.* 1*d.* residue, &c. hath hitherto been
 ready and still is ready to pay to the said *M.*
 the said 13*l.* 17*s.* 1*d.* and he bringeth the
 same here into court ready to be paid to the
 said *M.* if she will accept the same; And
 this he is ready to verify: Wherefore he
 prayeth judgment if the said *Mary* ought to
 recover any damages by reason of the non-
 payment of the said 13*l.* 17*s.* 1*d.* residue,
 &c. thereof against him.

D. Tolls.

Mr.

Mr. B. take notice that the defendant *N. rice of set* *J. B.* at the trial of the general issue herein *off.* above pleaded, will insist and give in evidence that the plaintiff *M. K.* before and at the time of exhibiting her bill against the said *J. B.* was and still is indebted to the said *J. B.* in the sum of 50 *l.* of lawful money of *Great Britain*, for work, labour, care and attendances by the said *J. B.* in and about the prosecuting, defending and soliciting of divers causes, suits and businesses in the law for the said *Mary* at her special instance and request done, taken and performed, and for money paid, laid out and expended by the said *J.* for the said *M.* in and about the prosecuting, defending and soliciting of those causes, suits, and businesses, at her like instance and request, and for fees due and of right payable to the said *J.* in that respect; And also in the further sum of 50 *l.* of like lawful money, for money by the said *J.* paid, laid out and expended for the said *M.* at her like instance and request; and for money by the said *Mary* had and received, to and for the use of the said *J.* Which said several sums so due and owing to the said *J.* from the said *M.* as aforesaid, the said *J.* doth intend to insist, at the trial of the general issue above pleaded, that the same or so much thereof as shall be sufficient may be set off against so much money, as shall appear to be due to the said *M.* upon the said several demands of the said *Mary* contained in the said declaration, to which the said *J.* hath pleaded the general issue,

according to the statute in such case made and provided, dated this 21st day of *May* the year of our Lord 1751.

To Mr. *J. B.* attorney for the plaintiff. *J. B.* the defendant.

Plea, a release. And the said *Arundel Roberts* by *Thomas Holland* his attorney, cometh and defendeth the force and injury when, &c. and saith, that the said *Benjamin Lane* ought not to have or maintain his said action against him, because he saith, that after the making the said several promises and undertakings in the said declaration mentioned above supposed to be made, and before the day of exhibiting the said bill of the said *B.* against him, *to wit*, on the 10th day of *May* in the 13th year of the reign of the lord the now king, at the parish aforesaid in the said county, the said *B.* by his certain writing of release indented, sealed with the seal of the said *B.* and now shewn here to the court of our said lord the king, bearing date same day and year, did remise, release, and for ever quit-claim unto the said *A. R.* his heirs, executors and administrators, all and all manner of actions, cause and causes of actions, suits, bills, bonds, obligations, debts, dues, duties, reckonings, accounts, sum and sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever, which against him the said *A.* he the said *B.* his heirs, executors or administrators, should or might

Profeit.

might have, claim, challenge or demand for or by reason or means of any matter, cause or thing whatsoever, from the beginning of the world, ~~to~~ the day of the date of the said writing of release, as by the said writing of release, amongst other things, more fully appeareth; And this he is ready to verify: Wherefore he prayeth judgment, if the said *Benjamin* ought to have or maintain his said action against him, &c.

Nash Grose.

And the said *B.* saith, that he ought not, *Replication.* by any thing by the said *A.* above in pleading alledged, to be barred from having or maintaining his said action in this behalf against him, because he saith, that he the said *B.* did not, after the making the several promises and assumptions in the said declaration mentioned, make such indenture of release as the said *A.* hath above in pleading alledged; and this he prayeth may be inquired of by the country: And the said *A.* doth so likewise.

Geo. Hill.

Hil. 16 Geo. 3.

AND the said *William Hammond*, by *Nathaniel Trayten* his attorney, cometh and defendeth the force and injury, when, *Bar, a general release incuria sur assump.* &c. and saith, that the said *Ann Davies* ought not to have or maintain her said action thereof against him, because he saith, that after the making the said several promises and undertakings in the said declaration mentioned

Profert.

tioned above supposed to be made, and before the exhibiting the said bill of the said *Anne*, to wit, on the 15th day of *April* in the 15th year of the reign of the lord the now king at *Ludlow* aforesaid in the said county, the said *Ann* by her certain writing of release, sealed with the seal of the said *Ann*, and then and there made and duly executed by her, which said writing of release the said *William* bringeth here into court, the date whereof is the day and year last mentioned, for herself, her heirs, executors and administrators, did remise, release, and for ever quit-claim, unto the said *William*, his heirs, executors and administrators, all and all manner of actions and actions, cause and causes of actions, suits, bills, bonds, writings, obligations, debts, dues, duties, reckonings, accounts, sum and sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever, both at law and in equity, or otherwise howsoever, which against the said *William* she ever had, then had, or which she the said *Ann*, her heirs, executors or administrators, could, should, or might have, claim, challenge or demand, for or by reason or means of any act, matter, cause or thing, from the beginning of the world, to the day of the date of the said writing of release; as by the said writing of release, amongst other things, more fully appeareth; And this he is ready to verify: Wherefore he prayeth judgment if the said *Ann* ought

to have or maintain her said action thereof
against him, &c. D. P.

And the said ~~Ann~~ ^{Ann} saith, that she, by any *Replication,*
thing above alleged by the said *William* in *dureſs of im-*
pleading, ought not to be barred from hav- *prifonment.*
ing her action aforeſaid against him the said
William, becauſe ſhe ſaith, that ſhe the said
Ann at the time of making the writing afore-
ſaid, was imprifoned by him the said *Wil-*
liam, to wit, at *Ludlow* aforeſaid in the said
county, and was there detained in priſon un-
til ſhe the said *Ann*, by force and dureſs of
that imprifonment, then and there made
the ſaid writing to the said *William*; And
this ſhe is ready to verify: Wherefore ſhe
prayeth judgment, and her damages by rea-
ſon of the premiſſes to be adjudged to her,
&c. F. R.

And the said *William* proteſting, that the *Rejoinder.*
ſaid *Ann*, at the time of making of the writ-
ing aforeſaid, was not imprifoned, as the
ſaid *Ann* hath in and by her ſaid replication
above ſuppoſed, for rejoinder the ſaid *Wil-*
liam ſaith, that the ſaid writing was not
made by force and dureſs of imprifonment,
as the ſaid *Ann* hath in her ſaid declaration
above alledged: And hereupon he putteth
himſelf upon the country, &c. Verdict
pro Q.

Case

Account for money lent
Another for money had and received.

Declaration in London, *J. C.* late of, *Esq.* was attached to
case Sur ass. *to wit,* *J.* answer unto *T. F.* of a plea of
on a foreign trespass upon the case, *Esq.* And whereupon
bill of exchange the said *T.* by *P. W.* his attorney complain-
by the person eth, that *whereas* there now is, and from
to whom made eth, that *whereas* there now is, and from
payable, a- time immemorial hath been, an antient and
gainst the laudable custom used and approved of by
drawer, the and amongst merchants and other persons,
drawee refu- residing, trading, and using commerce in
sing to accept parts beyond the seas, and merchants and
it. other persons, residing, trading, and using
Plf. 10 G. 2. commerce within this kingdom of *E. to wit,*
ro. 1035. that if any merchant or other person, resid-
Lil. Ent. 55. ing, trading, and using commerce in parts
Custom of mer- beyond the seas, shall have made any bill of
 exchange in writing, with his own proper
 hand thereto subscribed, and shall have di-
 rected such bill to any merchant or mer-
 chants, or other person or persons, residing,
 trading, and using commerce within this
 kingdom of *England*, and by such bill shall
 have required such merchant or merchants,
 or such other person or persons to whom
 such bill shall have been directed, to pay to
 any other merchant or other person residing,
 trading, and using commerce in parts be-
 yond the seas, and named in such bill or or-
 der, any sum of money in such bill men-
 tioned,

tioned, at any time mentioned in such bill, and appointed by such bill for the payment thereof; and if such merchant or merchants, person or persons, to whom such bill shall have been presented, upon sight of such bill shall have refused to accept such bill, or to pay such sum of money in such bill mentioned, at the time mentioned in such bill for payment thereof, to such merchant or other person to whom or to whose order such sum of money in such bill mentioned, by such bill shall have been appointed to be paid; and if such merchant or other person, to whom or whose order such sum of money in such bill mentioned, by such bill shall have been appointed to be paid, shall have caused such bill to be protested in writing for such non-acceptance or non-payment thereof; Then such merchant or other person, who shall so have made such bill, upon notice of such non-acceptance or non-payment and protest, hath for all the time aforesaid been liable, and hath been used and accustomed to be liable, and for all the time aforesaid hath ought to have been liable, and still is liable to pay to such merchant or other person named in such bill, to whom or whose order such sum of money in such bill mentioned, by such bill shall have been so appointed to have been paid. *And whereas Plaintiff and defendant residing beyond sea, drawees residing in England.* at the several times hereafter next mentioned the said J. and T. were persons residing, trading, and using commerce in parts beyond the seas, to wit, at St. Martin's in the kingdom of France, and one P. C. and D. C.

D. C. were persons residing, trading, and using commerce within this kingdom of *England*, *to wit*, at *London* aforesaid, and the said *P.* and *D.* were then and there partners in their said commerce; And being to respectively residing, trading, and using commerce as aforesaid, the said *I.* on the 3d day of *April* in the year of our Lord 1776, in parts beyond the seas, *to wit*, at *St. Martin's* aforesaid in the kingdom of *France*, made his certain bill of exchange in writing, with his own proper hand thereto subscribed, according to the custom aforesaid, and then and there directed the said bill, bearing date the same day and year, to the said *P.* and *D.* and by the said bill required the said *P.* and *D.* at two usances, to pay that his first bill of exchange to the said *T.* or order, 74*l.* 18*s.* sterling, value received of the said *T.* and for balance of him the said *I.*'s account with the said *P.* and *D.* as by advice from the said *I.* Which said bill of exchange he the said *T.* afterwards, *to wit*, on the 16th day of *April* in the year of our Lord 1776, at *London* aforesaid, *to wit*, at the parish of *St. Mary le Bow* in the ward of *Cheap*, shewed to the said *P.* and *D.* and then and there required the said *P.* and *D.* to accept the said bill, according to the said custom: But the said *P.* and *D.* then and there refused to accept the said bill, or ever to pay to the said *T.* the sum of money mentioned in the said bill, or any part thereof: By reason whereof he the said *T.* afterwards, *to wit*, on the same day and year last aforesaid, at *London* aforesaid,

*Bill drawn by
defendant pay-
able to plain-
tiff.*

*Shewn to the
drawees.*

*They refuse to
accept it.*

Bill protested.

aforesaid, in the parish and ward aforesaid, caused the said bill to be duly protested in writing, for such non-acceptance thereof by the said P. and D. Of which said non-acceptance of the said bill, and of the said protest of the said bill for the said non-acceptance thereof, he the said T. afterwards, *to wit*, on the 17th day of April in the said year of our Lord 1776, at L. aforesaid, in the parish and ward aforesaid, gave notice to the said I. By reason of which said premises, and according to the custom aforesaid, he the said I. became liable to pay to the said T. the said sum of money mentioned in the said bill; And being so liable, *Assumpsit.* he the said I. in consideration thereof, afterwards, *to wit*, the same day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said T. to pay him the said sum of money mentioned in the said bill, when he should be afterwards there-to requested. *And whereas* the said I. and T. *Second count.* and P. and D. being so respectively residing, trading, and using commerce as aforesaid, and the said P. and D. being partners in their said commerce as aforesaid, the said I. afterwards, *to wit*, on the said 3d day of April in the year of our Lord 1776, aforesaid, *Bill drawn by* new style, in parts beyond the seas, *defendant pay-* *able to plain-* at St. Martin's aforesaid in the said kingdom of France, made his certain other bill of ex- *tiff.* change in writing, subscribed with his own proper hand, according to the said custom, and the said last mentioned bill bearing date

*Shewn to
drawees.*

*They refuse to
accept it.*

Bill protested.

*Notice to de-
fendant.*

the same day and year last aforesaid, directed to the said *P.* and *D.* and by the said last mentioned bill required the said *P.* and *D.* at two usances to pay that his first bill of exchange to the said *T.* or order, other 75 *l.* 18 *s.* sterling, value received of him the said *T.* and for balance of his the said *I.*'s account with the said *P.* and *D.* as by advice from the said *I.* Which last mentioned bill of exchange he the said *T.* afterwards, *to wit*, on the 26th day of *May* in the year of our Lord 1776, aforesaid, at *London* aforesaid, in the parish and ward aforesaid, shewed to the said *P.* and *D.* for their acceptance and payment thereof, and then and there requested the said *P.* and *D.* to accept and pay the last mentioned bill, according to the tenor of the same bill, and the custom aforesaid: And the said *P.* and *D.* then and there refused to accept the said last mentioned bill, or ever to pay to the said *T.* the said sum of money mentioned in the said last mentioned bill, or any part thereof: By reason of which said last mentioned premises he the said *T.* afterwards, *to wit*, on the same day and year last aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, caused the said last mentioned bill to be duly protested in writing for such non-acceptance and non-payment thereof by the said *P.* and *D.* Of which said non-acceptance and non-payment of the said last mentioned bill, and of the said last mentioned protest of the said last mentioned bill for the said non-acceptance and non-payment thereof, he the said

said T. afterwards, *to wit*, on the said 26th day of *May* in the year of our Lord 17th 6, aforesaid, at L. aforesaid, in the parish and ward aforesaid, gave notice to the said I. by reason whereof, and according to the custom aforesaid, he the said I. became liable [*ut supra.*] And whereas at the several times hereafter mentioned the said I. and T. and P. and D. were persons residing, trading, and using commerce within this kingdom of *England*, *to wit*, at L. aforesaid, in the parish and ward aforesaid, and the said P. and D. were then and there partners in their said commerce, and being so residing, trading, and using commerce, the said I. afterwards, *to wit*, on the 3d day of *April* in the year of our Lord 1776, at L. aforesaid, in the parish and ward aforesaid, made his certain other bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved, and the said last mentioned bill, bearing date the same day and year last aforesaid, directed to the said P. and D. and by the said last mentioned bill required the said P. and D. at two usances to pay that his first bill of exchange to the said T. or order, other 75*l.* 18*s.* sterling, value received of the said T. and for balance of his the said I.'s account with the said P. and D. as by advice from the said I. which said last mentioned bill of exchange he the said T. afterwards, *to wit*, on the 16th day of *June* in the year of our Lord 1776, aforesaid, at L. aforesaid, at the parish

Third count.
Plaintiff, defendant, and drawers residing in London.
Bill drawn by defendant payable to plaintiff.
Shewn to drawers.

They refuse to accept it.

Notice to defendant.

parish and ward afore said, shewed to the said *P.* and *D.* and then and there required the said *P.* and *D.* to accept the said last mentioned bill according to the said custom; but the said *P.* and *D.* then and there wholly refused to accept the said last mentioned bill, or ever to pay to the said *T.* the said sum of money specified in the said last mentioned bill, or any part thereof: Of all which said last mentioned premises he the said *I.* afterwards, *to wit*, on the 8th day of *June* in the year afore said, at *L.* afore said, in the parish and ward afore said, had notice. By reason of which said last mentioned premises, and according to the said custom, and by the law of merchants, he the said *I.* became liable [*ut supra.*]

Indeb. ass. for money lent and accommodated 1 *Jan.* 1776.

Had and received.

Laid out and expended.

Declaration in case Sur ass. by the assignees of the effects of a bankrupt

Middlesex, *G. B.* late of, &c. was attached *to wit*, to answer *A. M.* and *F. C.* assignees of the goods, debts and chattels of *H. V.* a bankrupt, according to the form of the statutes concerning bankrupts made and provided, in a plea of trespass on the case, &c. And whereupon the said *A. M.* and *E. C.* by *W. W.* their attorney complain, *That where-* as the said *G.* after the 1st day of *May* in the year of our Lord 1705, and before he the said *H. V.* became a bankrupt, *to wit*, the — day of — in the year of our Lord —, at *W.* in the said county of *M.* made his

On a promissory note drawn by defendant, and indorsed to the bankrupt.

his certain note in writing, commonly called a promissory note, with his own proper hand thereto subscribed, bearing date the same day and year last mentioned, and the same note to one *J. M.* did then and there deliver, by which said note the said *G.* promised to pay to the said *J. M.* by the name of *J. M. Esq;* or order, *one month after date, — value received;* and by reason thereof, and also by force of the statute in such case made and provided, the said *G.* became chargeable to pay to the said *J. M.* or his order, the same sum of money, according to the tenor of the said note. *And* the said *J. M.* after the making of the said note, and before the said sum mentioned in the said note, or any part thereof, was paid to him, and also before the time by the said note appointed for payment thereof, and also before the said *H. N.* became a bankrupt, *to wit,* the same day and year last mentioned, at *W.* aforesaid, indorsed the said note, with his own proper hand thereunto subscribed, and by the said indorsement appointed the contents of the said note to be paid to the said *H. V.* for value received, and for that purpose the said *J. M.* did then and there deliver the said note so indorsed to the said *H. V.* Whereof the said *G.* afterwards, *to wit,* the day and year last mentioned, at *W.* aforesaid, had notice; and by reason thereof, and also by force of the statute in such case made and provided, the said *G.* became chargeable to pay to the said *H. V.* the same sum of money, according to the tenor of the same

Indorsement,

Notice.

Assumpsit. note, and of the indorsement thereon. *And* being so chargeable, the said G. in consideration thereof, afterwards, and before the said H. V. became a bankrupt, *to wit*, the — day of — in the year of our Lord — at W. aforesaid, undertook, and to the said H. V. then and there faithfully promised to pay to the said H. V. the same sum of money mentioned in the said note, according to the indorsement thereon, when afterwards

Indeb. assump.
for money lent
by the bankrupt.

he should be thereunto required. *And where-* as also the said G. afterwards, and before the said H. V. became a bankrupt, *to wit*, the said — day of — in the said year of our Lord — at W. aforesaid, was indebted to the said H. V. in — of good and lawful money of *Great Britain*, for such a sum of money by the said H. V. to the said G. and at the special instance and request of the said G. before that time lent and accommodated; and being so indebted, the said G. in consideration thereof, afterwards, and before the said H. V. became a bankrupt, *to wit*, the day and year last mentioned, at W. aforesaid, undertook, and to the said H. V. then and there faithfully promised to pay to the said H. V. the said — last mentioned, when afterwards he should be thereunto required.

Breach.

Nevertheless, the said G. not regarding his said several promises and undertakings aforesaid, in form aforesaid made, but contriving and fraudulently intending the said A. and E. in this behalf craftily and subtilly to deceive and defraud, hath not yet paid the said several sums of money or any part thereof

thereof to the said *H.* at any time before he the said *H.* became a bankrupt, or to the said *A.* and *E.* or either of them, at any time after the said *H.* became a bankrupt, (altho' the said *G.* afterwards, *to wit*, the said — day of — in the said year of our Lord —, and oftentimes afterwards, before he the said *H.* became a bankrupt, and after the said *H.* became a bankrupt, *to wit*, the — day of — in the year of our Lord 1776, and oftentimes as well before as after, by the said *A.* and *E.* at *W.* aforesaid, was thereunto required), but he hath hitherto altogether refused, and still doth refuse to pay or in any wise to content them or either of them for the same, to the damage of the said *A.* and *E.* 120*l.* And thereof they bring suit, &c.

London, *W.* *B.* late of, &c. executor of *Declaration in to wit*, the testament and last will of *case sur ass.*
R. B. widow, deceased, was attached to an- *against an ex-*
 swer *W. C.* in a plea of trespass on the case, *ecutor.*
 &c. And whereupon the said *W. C.* by *J.*
C. his attorney complaineth, *That whereas* *By the second*
 after the 1st day of May which was in the *indorse of a*
 year of our Lord 1705, *to wit*, on the — *promissory note*
 day of — in the year of our Lord —, the *drawn by the*
 said *R.* in her life-time at *L. to wit*, at the *testatrix.*
 parish of St. Bridget, otherwife *Bride's*, in
 the ward of *Farringdon without*, made her
 certain note in writing, called a promissory
 note, subscribed with the proper hand and
 name of her the said *R.* bearing date the
 same day and year last aforesaid, and the

First indorsement.

same note so subscribed then and there, *to wit*, on the same day and year last above mentioned, at *L.* aforesaid in the parish and ward aforesaid, delivered^k to one *R. B.* by which note the said *R.* promised to pay to the same *R. B.* or order, 40 *l.* *three months after date*, for value in the same note mentioned to be received. *And* the said *R.* (to

whom or to whose order the payment of the said money in the same note contained was appointed to be made) afterwards, and before the payment of the money in the said note contained, *to wit*, on the same — day of — in the said year of our Lord —, at *L.* aforesaid, in the parish and ward aforesaid, by a certain indorsement in writing, subscribed with the proper hand of the said *R.* and indorsed upon the same note, did assign the aforesaid note, and by that indorsement did appoint and order the contents of the aforesaid note to be paid to one *M. Y.* or her order, for value in the same indorsement mentioned to be received. *And* the afore-

Second indorsement.

said *M.* (to whom or to whose order the payment of the said sum of money contained in the same note was by the same indorsement appointed to be made) afterwards, and before the payment of the money aforesaid contained in the said note, *to wit*, on the same — day of —, in the year of our Lord — above said, at *L.* aforesaid in the parish and ward aforesaid, by another indorsement in writing, subscribed with the proper hand of the said *M.* and indorsed upon the said note, did assign the same note,
and

and by that indorsement did appoint and order the contents of the aforesaid note to be paid to the said *W. C.* according to the tenor of the aforesaid note. *Of which* said indorsements the said *R.* in her life-time afterwards, ~~to wit~~, on the same — day of — in the year of our Lord — aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, had notice by the said *W. C.* By reason of which said premisses, and also by force of the statute in that case lately made and provided, the aforesaid *R.* in her life-time was and became chargeable to pay to the said *W. C.* the said sum of 40*l.* in the said note contained, according to the tenor of the same note, and of the said two indorsements thereon made as aforesaid. And being so chargeable, &c.

Notices
Assumpsit.

Middlesex, *J. R.* late of the parish of St. *to wit*, *J. Paul*, Covent Garden, Esq; was attached to answer *J. F. L.* of a plea of trespass upon the case, &c. And whereupon *J. F. L.* by *J. S.* his attorney complaineth, That whereas the said *J. R.* on the 1st day of August in the year of our Lord 1772, at *W.* in the said county of *M.* was indebted to the said *J. F. L.* in the sum of 100*l.* of good and lawful money of Great Britain, for certain work, labour, attendance and service of the said *J. F. L.* before that time done and performed by the said *J. F. L.* in his business of a musician, at the Theatre Royal in Covent Garden, for the said *J. R.* at his special instance and request; and also for other work

Dec'ration in case, Sur ass.
Indeb. ass.
for work, &c. in the business of a musician at the play-house.

Quantum me-
ruit thereon.

Indeb. ass. for
work, &c. by
plaintiff's
wife, in the
business of an
actress and
singer at the
playhouse.

and labour done and performed by him the said *J. F. L.* for the said *J. R.* at his like instance and request; and being so indebted, he the said *J. R.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, undertook, and to the said *J. F. L.* then and there faithfully promised to pay him the said sum of money. *And whereas also* the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, in consideration that the said *J. F. L.* at the special instance and request of the said *J. R.* had before that time done and performed certain other work, labour, attendance and service in his business of a musician, at the theatre royal in *Covent Garden* aforesaid; and also other work and labour for the said *J. R.* at his like instance and request, undertook, and to the said *J. F. L.* then and there faithfully promised to pay to him so much money as he the said *J. F. L.* had reasonably deserved to have from the said *J. R.* for the same. And the said *J. F. L.* doth aver, that he reasonably deserved to have from the said *J. R.* for the same, another sum of 100*l.* of like lawful money, that is to say, at *W.* aforesaid, whereof the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, there had notice. *And whereas also* the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, was indebted to the said *J. F. L.* in the further sum of 100*l.* of like lawful money of *Great Britain*, for certain work, labour, attendance,

attendance and service of *I.* the wife of the said *J. F. L.* before that time done and performed by the said *I.* the wife of the said *J. F. L.* whilst she was the wife of the said *J. F. L.* in her business of an actress and singer at the theatre royal in *Covent Garden* aforesaid; and also for other work, labour and service done and performed by her whilst she was the wife of the said *J. F. L.* for the said *J. R.* at his special instance and request; and being so indebted, he the said *J. R.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, undertook, and to the said *J. F. L.* then and there faithfully promised to pay to him the last mentioned sum of money.

And whereas also the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, in consideration that the said *I.* the wife of the said *J. F. L.* at the special instance and request of the said *J. R.* had before that time, whilst she was the wife of the said *J. F. L.* done and performed certain other work, labour, attendance and service, in her business of an actress and singer at the theatre royal in *Covent Garden* aforesaid, and other work and labour for the said *J. R.* at his like instance and request undertook, and to the said *J. F. L.* then and there faithfully promised to pay him so much money as he had reasonably deserved to have from the said *J. R.* for the same: And the said *J. F. L.* doth aver, that he reasonably deserved to have from the said *J. R.* for the same another sum

Quantum meruit thereon.

Breach.

of 100 l. of like lawful money of *Great Brittain*, that is to say, at *W.* aforesaid, whereof the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, the *e* had notice*. *Nevertheless* the said *J. R.* not regarding his said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said *J. F. L.* in this behalf, hath not paid to him the said several sums of money, or any of them, or any part thereof; although to pay the same to him the said *J. F. L.* he the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, was requested by the said *J. F. L.* but the said *J. R.* to pay the same to him hath hitherto altogether refused, and doth yet refuse, to the damage of the said *J. F. L.* of 150 l. And thereof he bringeth suit, &c.

Declaration in case Sur assumpsit.

London, to wit, *R. L.* late of, &c. was attached to answer unto *J. R.* in a plea of trespass on the case, &c. *And whereupon* the

* *Indeb. assumpsit* by baron and feme, for work done by the wife, *ad damnum ipsorum*, upon a special promise made to the wife only, the wife must be made a party to the action, but not on a promise implied by law; the law will not imply any promise made to the wife, she is servant to the husband, who was at the charge in providing materials, &c. to carry on the trade; therefore he ought to have the recompence, and therefore the law implies the promise was made to him only. Judgment *Quod nil capiat per billam.* Carth. 251.

said J. by L. R. his attorney complaineth,
That whereas the said R. on the — day of *Indeb. ass. for*
 — in the year of our Lord 1734, at L. *to meat, drink,*
wit, in the parish of St. Mary le Bow in the *washing and*
ward of Cheap, was indebted unto the said J. in *lodging, found*
 12*l* for meat, drink, washing and lodging, *for defendant's*
 by the said J. before that time found and *wife.*
 provided for * one H the wife of the said
 R. at the special instance and request of the
 said R. and being so indebted, he the said
 R. in consideration thereof, afterwards, *to*
wit, the same day and year abovesaid, at L.
 aforesaid, in the parish and ward aforesaid
 undertook, and then and there faithfully
 promised the said J. to pay him the said
 sum of money, when he should be after-
 wards thereunto requested. *And whereas* *Quantum me-*
afterwards, to wit, the same day and year *ruit thereon.*
 abovesaid, at L. aforesaid, in the parish and

* The husband and wife lived separate, she boarded
 in the plaintiff's house, who declares against the hus-
 band, as for meat and drink found and provided for the
 husband. On evidence it appeared to be for the wife.
Eyre C J held it did not support the declaration; for
 though the husband is chargeable upon his implied con-
 tract for what necessities are administered to the wife,
 and therefore if goods are delivered to her, the vendor
 may declare generally for goods sold and delivered; yet
 in this case the plaintiff fails in his description of the sub-
 ject matter of the contract; so that where he now de-
 clares generally, a recovery in this action could not be
 pleaded in bar to a special action for meat and drink
 found and provided for the wife, *Trin. 12 G. 1. Hadley*
v. Collins. MS. Notes.

ward aforesaid, in consideration that the said J. had before that time found and provided other meat, drink, washing and lodging for the said H. the said wife of the said R. and at the like special instance and request of the said R. he the said R. undertook, and then and there faithfully promised the said J. to pay him so much money as he therefore reasonably deserved to have: And the said J. doth aver, that he therefore reasonably deserved to have of the said R. other 12 l. to wit, at L. aforesaid, in the parish and ward aforesaid; whereof the said R. then and there had notice. *Yet, &c.*

B. carb.

*Memorandum
of a bill a-
gainst an at-
torney.*

*Bill in case
sur assumpsit
against an at-
torney.*

*Indeb. ass. for
the use and oc-
cupation of a
messuage.*

Middlesex, to wit: *Be it remembered*, that on the — day of —, in this same term, T. II. came here into court by S. G. his attorney, and exhibited to the justices of our lord the king here his certain bill against L. J. one of the attornies of the court of our lord the king of the bench present here in court in his own proper person, of a plea of trespass on the case, which said bill followeth in these words, *to wit*, *Easter term* in the 10th year of the reign of king George III. *To* the justices of our lord the king of the common bench, *Middlesex*, *to wit*, T. H. by J. G. his attorney complaineth of L. J. one of the attornies of the court of the bench of our sovereign lord the king present here in court in his own proper person, *for that whereas* the said L. the 1st day of April in the year of our Lord 1769, at H. in the said county of M. was indebted to the said R. in 60 l. of lawful money of Great

Britain,

Britain, for the use and occupation of a certain messuage, or tenement and garden, with the appurtenances, of him the said *T.* lying and being at *H.* in the county aforesaid, before that time held, used and occupied by the said *L.* at his special instance and request from the said *T.* and by his permission; and being so indebted, the said *L.* afterwards, that is to say, the same day and year aforesaid, at *W.* aforesaid in the county aforesaid, in consideration thereof undertook, and then and there faithfully promised the said *T.* to pay him the said sum of money when he should be thereto required.

And also whereas the said *L.* afterwards, Quantum meruit. that is to say, the same day and year aforesaid, at *W.* aforesaid in the county aforesaid, in consideration that the said *T.* at the like special instance and request of him the said *L.* had before that time permitted him the said *L.* to have and use a certain other messuage or tenement and garden, with the appurtenances of him the said *T.* lying and being in *H.* aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *T.* to pay him so much money as he had reasonably deserved to have for the same, when he the said *L.* should be thereto required: And the said *T.* in fact saith, that he reasonably deserved to have for the same from the said *L.* other 60*l.* of like lawful money, *to wit*, at *W.* aforesaid in the county aforesaid; whereof the said *L.* afterwards, *to wit*, the same day and

and year aforesaid, at *W.* aforesaid in the county aforesaid had notice. *Yet, &c.*

Declaration in case Sur ass. against the survivor, on a joint promise.

Middlesex, to wit, *W. P.* late of the parish of *St. Clement Danes* in the county of *Middlesex*, vintner, was attached to answer *J. F.* and *T. G.* in a plea of trespass upon the case, &c. And whereupon the said *J.* and *T.* by *H. S.* their attorney complain, that whereas the said *W.* together with one *T. T.* lately deceased (whom the said *W.* survived) in the life of the said *T. T.* that is to say, on, &c. at, &c. were indebted to the said *J. F.* and *T. G.* in 100*l.* of lawful money, &c. for so much money by the said *W. P.* and *T. T.* in the life-time of the said *T. T.* of the said *J. F.* and *T. G.* and to the use of the said *J. F.* and *T. G.* before that time had and received; and being so indebted, the said *W. P.* and *T. T.* in consideration thereof, afterwards, that is to say, on the same day and year at, &c. undertook, and to the said *J. F.* and *T. G.* then and there faithfully promised that they the said *W. P.* and *T. T.* would well and faithfully pay and content the said 100*l.* to the said *J. F.* and *T. G.* when they should be thereunto afterwards requested. *And also whereas*

Indeb. ass. for money had and received.

Indeb. ass. for money lent.

afterwards, that is to say, on the same day and year above said at, &c. the said *W. P.* and *T. T.* in the life-time of the said *T. T.* were indebted [for money lent] *Nevertheless* the said *W. P.* and *T. T.* in the life-time of the said *T. T.* and the said *W. P.* after the death of the said *T. T.* not regarding their said several promises and undertakings made
in

in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *J. F.* and *T. G.* in this behalf, have not paid, nor has either of them paid the said several sums of money, or any of them, or any part thereof, to the said *J. F.* and *T. G.* or to either of them, (although so to do the said *W. P.* after the death of the said *T. T.* that is to say, on the 3d day, *Éc.* at, *Éc.* was requested by the said *J. F.* and *T. G.*) but they wholly refused, and the said *W. P.* still refuseth to pay the same to them, or any ways to content them for the same, to the damage of the said *J. F.* and *T. G.* of 100*l.* And thereof they bring suit, *Éc.* *Harley Vaughan.*

London, to wit, *E. H.* late of, *Éc.* and *T. T.* late of, *Éc.* were attached to answer *Declaration in case Sur ass.*
J. B. G. C. and *W. C.* assignees of the debts, *by assignees of the goods of a bankrupt.*
 goods and chattels of *A. B.* and *B. R.* bankrupts, according to the form of the statute made and provided concerning bankrupts, in a plea of trespass on the case, *Éc.*
 And whereupon the said *J. G.* and *W.* by *H. S.* their attorney complain, wherefore *whereas* *Indeb. ass. for money had and received.*
 the said *E.* and *T.* on the 30th day, *Éc.* at, *Éc.* were indebted to the said *J. G.* and *W.* as being assignees of the debts, goods and chattels of the said *A.* and *B.* bankrupts as aforesaid, in 50*l.* of lawful money, *Éc.* for so much money by the said *E.* and *T.* of the said *A.* and *B.* before that time had and received; and being so indebted, *Éc.* undertook, and to the said *J. G.* and *W.* then
 and

*Infimul com-
putassent.*

and there faithfully promised that, &c. to the said J. G. and W. when, &c. *And also whereas* the said E. and T. afterwards, that is to say, on the same 30th day, &c. at &c. accounted together with the said J. G. and W. being assignees, &c. as aforesaid, concerning divers other sums of money to the said J. G. and W. as being assignees, &c. as aforesaid, before that time due, and then being in arrear and unpaid, and on the said account the said E. and T. then and there were found in arrear to the said J. G. and W. in 48 l. 16 s. 6 d. of like lawful money, &c. and being so found in arrear, &c. *Nevertheless,* the said, &c. intending the said J. G. and W. in this behalf craftily, &c. or any part thereof, to the said J. G. and W. or to either of them, (although often requested) have not, nor has either of them paid, but have intirely refused, and still do refuse to pay the said several sums of money to the said J. G. and W. or any ways content them for the same, to the damage of the said J. G. and W. of 50 l. And thereupon they bring suit, &c.

Breach.

John Aspinall.

*Declaration in
case Sur ass.
against an ex-
ecutor for mo-
ney had and re-
ceived of and
for the plain-
tiff, and to
their use.*

3 D. A. 393.
p. 13. S. C.

Huntingdonshire, to wit, H. F. late of H. in the county aforesaid, innholder, executor of the testament of T. W. was attached to answer T. L. J. H. and E. C. of a plea of trespass on the case, &c. And whereupon the said T. L. J. and E. by R. C. their attorney complain. Wherefore whereas the said T. W. in his life-time, to wit, on the 5th day of *October* in the 32d year of the reign

reign of our sovereign lord *Charles II.* now ^{3 Lev. 57.}
king of *England, &c.* at *H.* was indebted to ^{S. C.}
the said *T. L. J.* and *E.* in 100*l.* of lawful ^{Tr. 33 Car. 2.}
money of *England*, as well for money by the ^{Ro. 1097,}
said *T. W.* in his life-time before that time ^{1098, 1099.}
had and received of the said *T. L. J.* and *E.*
as for money by the said *T. W.* in his
life time before that time had and re-
ceived for the said *T. L. J.* and *E.* to the
proper use of the said *T. L. J.* and *E.* and
the said *T. W.* being so thereupon indebted,
the said *T. W.* in his life-time afterwards,
to wit, on the same day and year at *H.*
aforesaid, in consideration thereof under-
took, and to the said *T. L. J.* and *E.* then
and there faithfully promised that he the said
T. W. would well and truly pay and content
the said 100*l.* to the said *T. L. J.* and *E.*
when he should be thereunto afterwards re-
quested. Yet the said *T. W.* in his life-time, ^{Breach.}
and the said *H.* after the death of the said
T. W. not minding his said promise and
undertaking, but contriving and fraudulent-
ly intending craftily and subtilly to deceive
and defraud the said *T. L. J.* and *E.* in this
behalf, have not paid or in any manner sa-
tisfied, nor has either of them paid or in
any manner satisfied the said 100*l.* or any
part thereof, to the said *T. L. J.* and *E.* or
to either of them; although afterwards the
said *T. L.* in his life-time, *to wit,* on the
10th day of *November* in the 32d year afo-
resaid, and the said *H.* after the death of the
said *T. W.* *to wit,* on the 7th day of *De-*
cember in the 32d year aforesaid, at *H.*
aforesaid

aforesaid, were thereunto severally requested by the said *T. L. J.* and *E.* but they intirely refused to pay them the same, and the said *H.* full refuseth to pay them the same, to the damage of the said *T. L. J.* and *E.* of 120*l.* And thereof they bring suit, &c.

Plea.

A bond entered into by the testator.

Defendant impleaded thereon.

And the said *H.* by *G. M.* his attorney cometh and defendeth the force and injury, when, &c. and saith that the said *T. L. J. H.* and *E. C.* ought not to have their said action against him, &c. Because he saith that the said *T. W.* in his life-time, *to wit*, on the 6th day of *September* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. at *H.* aforesaid, by his certain writing obligatory acknowledged himself to be bound to one *D. H.* in 40*l.* to be paid to the said *D. H.* when he should be thereunto requested; which said writing was made by the said *T. W.* to the said *D. H.* for a true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* Whereby the said *D. H.* after the death of the said *T. W.* (the said debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our lord the now king, in the court of our lord the king before *Sir Francis North*, knight, and his companions, then justices of the said lord the king of the bench here, *to wit*, at *W.* impleaded the said *H.* of and for the said 40*l.* then and yet unpaid, by the writ of our said lord the king, of debt, returnable and returned in the said court; in which said plea the said parties

parties appearing in the same court, the said *D. H.* by *R. C.* then his attorney said, that whereas the said *T.* in his life-time, on the 6th. day of *September* in the 33d year of the reign of our sovereign lord *Charles II.* now king of *England, &c.* at *H.* aforesaid, by his certain writing obligatory acknowledged himself to be bound to the said *D. H.* in the said 40*l.* to be paid to the said *D. H.* when he should be thereunto requested; yet the said *T.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often required, had not rendered the said 40*l.* to the said *D. H.* but had intirely refused to render the same to him, and the said *H. F.* then refused to render the same to the said *D. H.* and unjustly detained; wherefore he then said that he was injured, and had damage to the value of 40*l.* and thereof he brought suit, &c. And he then brought here into court the said writing, which testified the said debt in form aforesaid, the date whereof was on the day and year aforesaid, &c. And the said *H.* by *G. M.* his attorney came and defended the force and injury, when, &c. and the same attorney then said that he was not informed by the same *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *D. H.* and he said nothing else thereupon; whereby the said *D. H.* remained thereupon undefended against the said *H. F.* Therefore it was considered by the same court, that the said *D. H.* should recover against the said *H. F.* his said debt, and his damages by the

*And judgment
was given
in favour of
the plaintiff
by
Non informatus.*

occasion of the detaining that debt, to 40*s.* adjudged by the court here to the said *D. H.* by his assent to be levied of the goods and chattels which were the said *T. W.*'s at the time of his death in the hands of the said *T.* to be administered, if he had so much in his hands to be administered, and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H.* and that the said *H. F.* should then be in mercy, &c. as by the record and process thereupon remaining in the same court of our said lord the king here plainly appeareth: Which said judgment so as afore-said obtained, was obtained for a true and just debt, and still remaineth in its full force and effect, no ways reversed or annulled; and the said debt and damages still remain in arrear unpaid to the said *D.* And the said *H. F.* further saith, that the said *T. W.* in his life-time, *to wit*, on the said 6th day of *September* in the 32d year of the reign of our said lord the present king, at *H.* afore-said, by his certain other writing obligatory acknowledged himself to be bound to the said *D. H.* in other 40*l.* to be paid to the said *D. H.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T.* to the said *D. H.* for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and the same writing obligatory still remaineth in its full force and effect; and the said debt at the time

*Another bond
entered into by
the testator.*

time of the death of the said *T. W.* was in arrear, and still is in arrear unpaid to the said *D. H.* And the said *H. F.* further saith, *Another bond entered into by the testator.* that the said *T. W.* in his life-time, *to wit,* on the said 6th day of *September* in the said 32d year of the reign of our said lord the present king, at the town of *H* aforesaid, by his certain other writing obligatory acknowledged himself to be bound to the said *D. H.* in other 40*l.* of lawful money of *England*, to be paid to the said *D.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T.* to the said *D.* for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and the same writing obligatory still remaineth in its full force and effect; and that debt at the time of the death of the said *T. W.* was in arrear, and still is in arrear unpaid to the said *D. H.* And the said *H. F.* further saith, that the said *T. W.* in his life-time, *to wit,* on the said 6th day of *September* in the said 32d year of the reign of our said lord the present king, at *H.* aforesaid, by his certain other writing obligatory acknowledged himself to be bound to the said *D. H.* in other 40*l.* of like lawful money of *England*, to be paid to the same *D. H.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T. W.* in his life-time to the said *D. H.*

*Rent due by
reftator on a
leafe parol.*

for another true and juft debt, and which at the time of the death of the faid *T. W.* was no ways paid or fatisfied by the faid *T. W.* to the faid *D. H.* and the fame writing obligatory ftill remaineth in its full force and effect, and that debt at the time of the death of the faid *T. W.* was in arrear, and ftill is in arrear unpaid to the faid *D. H.* And the faid *H. F.* further faith, that the right honourable *E.* earl of *S.* on the 25th day of *March* in the year of our Lord 1677, at the town of *H.* in the county aforefaid, demifed to the faid *T. W.* in his life-time one meffuage called the priory-houfe, one dove-houfe, one clofe of pasture called the priory-clofe, one other clofe of pasture called *Yeas Grove*, one other clofe or pasture called *Straughton's Grove*, one other clofe called *Middle St. Herbert's*, and three other closes of pasture called the *Infield closes*, with the appurtenances, within the parifh of *St. Mary* in the town of *H.* aforefaid; To have and occupy the faid tenements to the faid *T. W.* from the faid 25th day of *March* in the year of our Lord 1677, aforefaid, until the end and term of one whole year thence next enfuing, and fully to be complete and ended, and fo from year to year, fo long as it fhould please both the faid parties: Rendering therefore yearly, fo long as the faid *T. W.* fhould hold and occupy the faid tenements with the appurtenances, by virtue of the faid demife, to the faid earl and his affigns; 56 l. of lawful money of *Eng-land*,

land, to be paid at the feasts of *St. Michael* the archangel, and the annunciation of the blessed Virgin *Mary*, by equal portions; by virtue of which said demise the said *T.* in his life-time, on the 26th day of *March* in the year of our Lord 1677, aforesaid, entered into the said tenements, with the appurtenances, and was possessed thereof and occupied the said tenements by the space of three years and the half of one year thence next ensuing, and 56*l.* of the rent aforesaid at the feast of *St. Michael* the archangel last past for one whole year then ended, were in arrear unpaid by the said *T. W.* in his life-time to the said earl; which said 56*l.* for the rent aforesaid, so as aforesaid due, were a true and just debt, and at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said earl; whereby the said earl, after the death of the said *T. W.* (the same debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our lord the present king, in the court of our said lord the king before Sir *Francis North*, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W.* impleaded the said *H. F.* after the death of the said *T. W.* of and for the said 56*l.* then and still unpaid, by the writ of our said lord the king of debt returnable and returned in the same court; in which said plea the said parties appearing in the same court, the said earl by *J. R.* his attorney then said, that he the same earl on the 25th day of

Defendant impleaded thereon.

March in the year of our Lord 1677, at *H.* aforesaid, had demised to the said *T. W.* in his life-time one messuage called the priory-house, one, &c. (*ut supra*) with the appurtenances, within the parish of *St. Mary* in *H.* aforesaid; To hold and occupy to the said *T. W.* from the said 25th day of *March* in the year of our Lord 1677, aforesaid, unto the full end and term of one whole year thence next ensuing and fully to be complete and ended, and so from year to year so long as it should please both the said parties; rendering therefore yearly, so long as the said *T. W.* should occupy the said tenements with the appurtenances, to the said earl and his assigns 5*l.* of lawful money of *England*, to be paid at the feast of *St. Michael* the archangel, and the annunciation of the blessed Virgin *Mary*, by equal portions: By virtue of which said demise the said *T. W.* entered into the said tenements with the appurtenances, and was possessed thereof and occupied the same tenements by the space of three years and the half of one year, and 5*l.* of the rent aforesaid were in arrear unpaid by the said *T. W.* to the said earl at the feast of *St. Michael* the archangel last past, for one whole year then ended, whereby an action accrued to the said earl to demand and have of the said *T. W.* in his life-time the said 5*l.* Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested, had not then rendered, nor had either of them rendered the said 5*l.* but they

they had to that time refused to render the same to him, and the said *H.* then refused to render the same to him, and unjustly detained the same: Whereupon he then said that he was injured, and had damages to the value of 40*l.* And therefore he then brought suit.

And the said *H. F.* by *G. M.* his attorney came and defended the force and injury, when, &c. and the same attorney then said that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H.* to the said earl, and said nothing else thereupon; whereby the said earl remained thereupon undefended against the said *H. F.* Therefore it was then considered by the said court, that the said earl should recover against the said *H. F.* his said debt, and his damages by occasion of the detaining that debt to 40*s.* adjudged by the court here to the said earl, by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administered; if he had so much in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should then be in mercy, &c. as by the record and proceedings thereupon remaining in the court of our said lord the king here may more fully appear: Which said judgment so as aforesaid obtained, was also obtained for a true and just debt, and still remaineth in its full force and effect, no way reversed or annul-

*And judgment
against him by
Non sum in-
formatus,*

*Testator in-
debted upon an
Insimul com-
putasset.*

*Defendant
impleaded
thereon.*

led; and the said debt and damages still remain in arrear unpaid to the said earl. And the said *H. F.* further saith, that the said *T. W.* in his life-time, *to wit*, on the 4th day of *December* in the 30th year of the reign of our said lord the present king, at *H.* aforesaid, accounted together with one *D. W.* gent. of divers sums of money before due and unpaid by the said *T. W.* to the said *D. W.* and upon that accounting the said *T. W.* in his life-time was found in arrearage to the said *D. W.* in 96*l.* of lawful money of *England*; and the said *T. W.* in his life-time afterwards satisfied the said *D. W.* 54*l.* 6*s.* and 8*d.* thereof, and 41*l.* 13*s.* and 4*d.* the residue of the said 96*l.* were a true and just debt of the said *T. W.* at the time of his death, and no ways paid or satisfied by the said *T. W.* to the said *D. W.* at the time of the death of the said *T. W.* Whereby the said *D. W.* after the death of the said *T. W.* (the same residue of the said debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our said lord the king, in the court of our said lord the king before Sir *Francis North*, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W.* aforesaid, impleaded the said *H. F.* of and for the said 41*l.* 13*s.* and 4*d.* residue of the said 96*l.* by the writ of our said lord the king of debt returnable and returned in the same court: In which said plea the said parties appearing in the same court, the said *D. W.* by

by *J. R.* his attorney said, that whereas the said *T. W.* in his life-time, *to wit*, on the said 4th day of *December* in the said 30th year of the reign of our said lord the present king, accounted together with the said *D. W.* of divers sums of money before due and unpaid by the said *T. W.* to the said *D. W.* and upon that accounting the said *T. W.* in his life time was found in arrear to the said *D. W.* in 96*l.* of lawful money of *England*, whereby an action accrued to the said *D. W.* to demand and have of the said *T. W.* in his life time the said 96*l.* and the said *T. W.* in his life time afterwards satisfied to the said *D. W.* 54*l.* 6*s.* and 8*d.* thereof: Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often requested, have not rendered, nor hath either of them rendered the said 41*l.* 13*s.* and 4*d.* residue of the said 96*l.* to the said *D. W.* but they had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Wherefore he said that he was injured, and had damage to the value of 40*l.*

And thereof he then brought suit, &c. And the said *H. F.* by *G. M.* his attorney came and defended the force and injury when, &c. and said that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *D. W.* and he said nothing else thereupon; whereby the said *D. W.* remained thereupon undefended against the said *H. F.* Therefore it was considered that the

*And judgment
against him by
Non sum in-
formatus.*

the said *D. W.* should recover against the said *H. F.* his said debt, and his damages by the occasion of the detaining of that debt to 50*s.* adjudged by the court here to the said *D.* by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administered, if he had so much thereof in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereupon remaining in the same court of our said lord the king here more fully appeareth: Which said judgment so as aforesaid obtained, was also obtained for a true and just debt, and still remaineth in its full force and effect, no ways reversed or annulled, and the said debt and damages are still in arrear unpaid to the said *D. W.* And the said *H. F.* further saith that the said *T. W.* in his life-time, to wit, on the 2d day of *November* in the 32d year of the reign of our said lord *Charles II.* now king of *England*, &c. at the town of *H.* accounted together with one *H. A.* of divers sums of money before due and unpaid by the said *T. W.* to the said *H. A.* and upon that accounting the said *T. W.* in his life-time was found in arrear to the said *H. A.* in 43*l.* 18*s.* and 4*d.* to be paid to the said *H. A.* when he should be thereunto afterwards requested; which said 43*l.* 18*s.* and 4*d.* so as aforesaid found in arrear upon the said

Testator indebted on an Infimul computasset.

said accounting, were a true and just debt,
 and were no ways paid or satisfied by the
 said *T. W.* to the said *H. A.* at the time of
 the death of the said *T. W.* Whereby the *Defendant*
 said *H. A.* after the death of the said *T. W.* *impleaded*
 (the same debt not being satisfied) *to wit,* *thereon.*
 in *Easter* term, in the 33d year of the reign
 of our said lord the present king, in the
 court of the said lord the king before Sir
Francis North, knt. and his companions,
 then justices of our said lord the king of the
 bench here, *to wit,* at *W.* impleaded the
 said *H. F.* of and for the said 43*l.* 18*s.* 4*d.*
 by the writ of our said lord the king of debt
 returnable and returned in the same court:
 in which said plea the said parties appearing
 in the same court, the said *H. A.* by *J. R.*
 his attorney said, that whereas the said *T. W.*
 in his life-time, *to wit,* on the 2d day of
November in the 32d year of the reign of
 our sovereign lord *Charles* the second, now
 king of *England,* &c. at the town of *H.* ac-
 counted together with the said *H. A.* of di-
 vers sums of money before due and unpaid
 by the said *T. W.* to the said *H. A.* and up-
 on that accounting the said *T. W.* in his life-
 time was found in arrear to the said *H. A.*
 in the said 43*l.* 18*s.* and 4*d.* to he paid to
 the said *H.* when he should be afterwards
 thereunto requested; whereby an action ac-
 crued to the said *H. A.* to demand and have
 of the said *T. W.* in his life-time the said
 43*l.* 18*s.* and 4*d.* yet the said *T. W.* in his
 life-time, and the said *H. F.* after the death
 of the said *T. W.* although often requested,
 had

*Judgment a-
gainst him by
Non sum in-
formatus.*

had not rendered, nor had either of them rendered the said 43*l.* 18*s.* and *sd.* to the said *H. A.* but they had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Whereupon he then said that he was injured, and had damage to the value of 40*l.* And therefore he then brought suit, &c. And the said *H. F.* by *G. M.* his attorney came and defended the force and injury then, &c. and the same attorney said that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *H. A.* and he said nothing else thereupon; whereby the said *H. A.* remained thereupon undetended against the said *H. F.* Therefore it was considered that the said *H. A.* should recover against the said *H. F.* his said debt, and his damages by occasion of the detaining that debt to 40*s.* adjudged by the court here to the said *H. A.* by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administered, if he had so much thereof in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereupon remaining in the said court of our said lord the king here more fully appeareth; which said judgment so as aforesaid obtained, was obtained for a true and just debt, and still remaineth in its full

full force and effect, no ways reversed or annulled, and the said debt and damages still remain in arrear unpaid to the said *H. A.* And the said *H. F.* further saith, that one *J. F.* gent. on the 20th day of *April* in the year of our Lord 1677, at *H.* aforesaid, demised to the said *T. W.* a close of land called the Back-yard with the appurtenances, adjoining to a certain messuage then in the occupation of the said *T. W.* within the parish of *St. Mary* in the town of *H.* aforesaid; To hold and occupy to the said *T. W.* from the feast of the Annunciation of the blessed Virgin *Mary* then last past, unto the end and term of ten years thence next ensuing, and fully to be complete and ended: Rendering therefore yearly during the said term to the said *J. F.* and his assigns 5*l.* of lawful money of *England*, to be paid at the feasts of *St. Michael* the archangel and the Annunciation of the blessed Virgin *Mary*, by equal portions; by virtue of which demise the said *T. W.* in his life-time entered into the said close with the appurtenances, and was possessed thereof, and 5*l.* of the said rent was in arrear unpaid by the said *T. W.* to the said *J.* at the feast of *St. Michael* the archangel last past, for one whole year then ending; which said 5*l.* for the said rent so as aforesaid due. were his true and just debt, and which was no ways paid or satisfied by the said *T. W.* to the said *J.* at the time of the death of the said *T. W.* Whereby the said *J. F.* after the death of the said *T.* (the said debt not being satisfied) to wit, in the

term of the *Holy Trinity* in the 33^d year of the reign of our sovereign lord the present king, in the court of our said lord the king before Sir *Francis North*, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W.* impleaded the said *H. F.* after the death of the said *T. W.* of and for the said 5*l.* then and yet unpaid, by the writ of our lord the king of debt returnable and returned in the same court: In which said plea the said parties appearing in the same court, the said *J. F.* by *J. R.* his attorney said, that whereas the said *J. F.* on the 20th day of *April* in the year of our Lord 1678, aforesaid, at *H.* aforesaid, had demised to the said *T. W.* one close of land called the Back-yard with the appurtenances, adjoining to a certain messuage then in the occupation of the said *T. W.* within the parish of *St. Mary* in *H.* To hold and occupy to the said *T. W.* from the feast of the Annunciation of the blessed Virgin *Mary* then last past, unto the end and term of ten years thence next ensuing, and fully to be complete and ended: Rendering therefore yearly during the said term, to the said *J. F.* and his assigns, 5*l.* of lawful money of *England*, to be paid at the feasts of *St. Michael* the archangel and the Annunciation of the blessed Virgin *Mary*, by equal portions; by virtue of which said demise the said *T. W.* in his life-time entered into the said close with the appurtenances, and was possessed thereof, and 5*l.* of the said rent were in arrears unpaid by the said *T. W.* in his life-time

to the said *J. F.* at the feast of *St. Michael* the archangel last past, for one whole year then ended, whereby an action accrued to the said *J. F.* to demand and have of the said *T. W.* in his life-time the said *5l.* Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested had not then rendered, nor had either of them rendered the said *5l.* to the said *J. F.* but they had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Wherefore he said that he was injured, and had damage to the value of *40 s.* And thereof he then brought suit, &c. And the said *H. F.* by *G. M.* his attorney came and defended the force and injury when, &c. and the said attorney then said, that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *J. F.* and he said nothing else thereupon; whereby the said *J. F.* remained thereupon undefended against the said *H. F.* Therefore it was considered by the said court, that the said *J. F.* should recover against the said *H. F.* his said debt, and his damages by occasion of the detaining that debt, to *40 s.* adjudged by the court here to the said *J. F.* by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administered, if he had so much thereof in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods

*And judgment
against him by
Non sum in-
formatus.*

Testator indebted for goods sold.

Defendant impleaded thereon.

goods and chattels of the said *H. F.* and that the said *H. F.* should then be in mercy, &c. as by the record and proceedings thereon remaining in the said court of our said lord the king here more fully may appear: Which said judgment so as aforesaid obtained, was obtained for a true and just debt, and which still remaineth in its full force and effect, no ways reversed or annulled, and the said debt and damages still remain in arrear unpaid to the said *J. F.* And the said *H. F.* further saith, that the said *T. W.* in his life-time, *to wit*, on the 9th day of *November* in the 23d year of the reign of our said lord the now king, at *H.* aforesaid, was indebted to the said *J. F.* in 36*l.* 7*s.* and 3*d.* of lawful money of *England*, for divers wares and merchandizes of the said *J. F.* before that time bargained and sold to the said *T. W.* which said 36*l.* 7*s.* and 3*d.* were the true and just debt of the said *T. W.* at the time of his death, and were no ways paid or satisfied by the said *T. W.* to the said *J. F.* at the time of the death of the said *T. W.* Whereby the said *J. F.* after the death of the said *T.* (the same debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our sovereign lord the present king, in the court of our said lord the king before Sir *Francis North*, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W.* aforesaid, impleaded the said *H. F.* of and for the said 36*l.* 7*s.* and 3*d.* by the writ of our said lord the king of debt returnable and returned

turned in the same court; in which said plea the said parties appearing in the same court, the said *J. F.* by *J. R.* his attorney said, that whereas the said *T. W.* in his life-time, *to wit*, on the 9th day of *November* in the 32d year of the reign of our sovereign lord the present king, at *H.* aforesaid, had bought of the said *J. F.* eighty-six dozen and five pounds of candles for 2*l.* and 10*s.* ten dozen of soap for 40*s.* and 3*d.* fourteen pounds of tobacco for 25*s.* [several other goods in like manner specified] to be paid to the said *J. F.* when he should be thereunto requested; which said several sums of money in the whole amount to 36*l.* 7*s.* and 3*d.* Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often requested, had not then rendered, nor had either of them rendered the said 36*l.* 7*s.* and 3*d.* to the said *J. F.* but had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained; Wherefore he then said that he was injured, and had damage to the value of 40*l.* And thereof he then brought suit, &c. And the said *H. F.* by *G. M.* his attorney came and defended the force and injury when, &c. and the said attorney then said, that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *J. F.* and he said nothing else thereupon; whereby the said *J. F.* remained thereupon undefended against the said *H. F.* Therefore it was considered by the said court, that the said *J. F.* should

*And judgment
against him by
Non sum in-
formatus.*

recover against the said *H. F.* his said debt and his damages by the occasion of the detaining that debt, to 40*s.* adjudged by the court here to the said *J. F.* by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administred, if he had so much thereof in his hands to be administred; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereon remaining in the same court of our said lord the king here more fully appeareth: Which said judgment, so as aforesaid obtained, was obtained for a true and just debt, and still remaineth in its full force and effect, no ways reversed or annulled; and the said debt and damages still remain in arrear unpaid to the said *J. F.* And the said *H. F.* further saith, that the said *T. W.* in his life-time, *to wit*, on the 30th day of *August* in the said 32d year of the reign of our sovereign lord the present king, at *H.* aforesaid, was indebted to one *W. A.* in 78*l.* of lawful money of *England*, for divers wares and merchandizes of the said *W. A.* before that time bargained and sold to the said *T. W.* in his life-time; which said 78*l.* were the true and just debt of the said *T. W.* at the time of his death, and were no ways paid or satisfied by the said *T. W.* to the said *W. A.* at the time of the

Testator indebted for goods bought.

death of the said *T. W.* Whereby the said *Defendant i. v. W. A.* after the death of the said *T. W.* (the said debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 3^d year afore-^{plead & there- on in B. R.}said, in the court of our said lord the king, before the king himself then being at *W.* afore-^{plead & there- on in B. R.}said, impleaded the said *H. F.* of and for the said 78*l.* by his certain bill against the said *H. F.* in the custody of the marshal, &c. of a plea of debt, and there were then pledges of prosecuting, *to wit*, *J. D.* and *R. R.* by which said bill the said *W. A.* complained against the said *H. F.* executor of the testament of the said *T. W.* deceased, in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, of a plea that he render to him 78*l.* of lawful money of *England*, which he unjustly detained from him, for that, *to wit*, that whereas the said *T. W.* in his life-time, *to wit*, on the 30th day of *August* in the 32^d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. at *London* afore-^{plead & there- on in B. R.}said, *to wit*, in the parish of *St. Mary le Bow* in the ward of *Cheap*, had bought of the said *W.* two pipes of *Canary* for 78*l.* to be paid to the said *W.* when he should be thereunto requested; yet the said *T.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often requested, had not, nor had either of them then paid the said 78*l.* to the said *W. A.* but had to that time refused, and the said *H. F.* then refused to pay him the same, to the damage of the said *W. A.* of 5*l.* And

*And judgment
against him by
Non potest
dedicere ac-
tionem.*

thereof he then brought suit, &c. *And the* said *H. F.* by *J. N.* then his attorney came and said, that he could not deny the said action of the said *W. A.* nor but that he detained from the said *W. A.* the said 78*l.* in the said declaration above mentioned, in manner and form as the said *W. A.* above declared against him: Therefore it was considered, that the said *W. A.* recover against the said *H.* his said debt, and his damages which he sustained, as well by occasion of the detaining that debt, as for his costs and charges by him about his suit in this behalf expended, adjudged to the said *W. A.* by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administred, if he had then so much thereof in his hands; and if he had not so much thereof in his hands, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. ~~by~~ by the record and proceedings thereon now remaining in the said court of our said lord the present king, before the king himself at *W.* aforesaid, more fully appeareth: Which said judgment so as aforesaid obtained, was also obtained for a true and just debt, and which still remaineth in its full force and effect, no ways reversed or annulled; and the debt and damages aforesaid are still in arrear unpaid to the said *W. A.* *And the said H. F.* further saith, that he hath fully administred all the goods and chattels which were of

*Plene admini-
stravit præter,
&c.*

of the said *T. W.* at the time of his death; and that he hath no goods or chattels which were of the said *T. W.* at the time of his death in his hands to be administred, nor had he on the day of suing out the original writ of the said *T. L. J. H.* and *E. C.* nor at any time afterwards, except goods and chattels to the value of 100*s.* which are bound and liable to the executions of the said several judgments, and to the payment of the said several sums by the said writings as aforesaid due and unpaid; And this he is ready to verify: Wherefore he prayeth judgment, if the said *T. L. J. H.* and *E. C.* ought to have their said action against him, &c.

And the said *T. L. J.* and *E.* say, that they by any thing before alledged ought not to be barred from having their said action, because they say that one writing obligatory of the said three writings obligatory of 40*l.* above pleaded in bar, made to the said *D. H.* by the said *T. W.* in his life-time as aforesaid, upon which judgment is not yet obtained by the said *D. to wit*, the writing obligatory of the three writings obligatory above secondly mentioned, was made and conditioned by a condition to the same writing obligatory subscribed, for the true and certain payment of the full and just sum of 20*l.* and 18*s.* of good and lawful money of *England*, to the said *D. H.* his executors, administrators or assigns, upon the 24th day of *June* then and now next ensuing, that then the said writing obligatory should be

Replication,
that one of the
writings obli-
gatory was
conditioned for
the payment of
a less sum at
a day yet to
come.

void; And this they are ready to verify: Wherefore they pray judgment, and their damages by occasion of the premisses to be adjudged to them.

Demurrer.

And the said *H.* saith, that the plea by the said *T. J.* and *E.* in manner and form above pleaded by replying, and the matter therein contained, are not sufficient in law to maintain the action of the said *T. J.* and *E.* against the said *H. F.* To which the said *H. F.* hath no need, and is not bound by the law of the land in any manner to answer; And this he is ready to verify: Wherefore, for default of a sufficient replication in this behalf, the said *H. F.* demurreth in law, and as before prayeth judgment, and that the said *T. L. J.* and *E.* may be barred from having their said action against him the said

Causes of demurrer.

H. F. &c. And for causes of demurring in law upon the said plea, the said *H.* according to the form of the statute in such case lately made and provided declareth, and to the court here sheweth the following causes, to wit: For that the said *T. L. J.* and *E.* by their said replication have not answered any thing as to two writings obligatory of the said three writings obligatory above pleaded in bar, nor as to the said several judgments so as aforesaid pleaded in the said bar of the said *H. F.* as by the law of the land the said *T. J.* and *E.* ought by replying to have alleged; and also for that, that the said *T. L. J.* and *E.* by their said replication do not sufficiently answer to the said plea of the said *H.* nor do they confess and avoid, nor traverse

erfe or deny the matter in the bar of the faid *H.* fo as aforefaid pleaded; and alfo for that, that the faid *T. J.* and *E.* by their faid replication ought to have pleaded further in form following, or to the like effect, *to wit*, that the faid *H. F.* on the day of fuing out the faid original writ of the faid *T. J.* and *E.* had divers goods and chattels which were of the faid *T. W.* at the time of his death in the hands of him the faid *H. F.* to be adminiftred, to the value of the faid 200*l.* in the faid declaration fpecified, befides goods and chattels which were liable and bound by the faid executions of the faid feveral judgments, and to the payment of the faid 20*l.* and 18*s.* in the faid condition of the faid writing mentioned, and to the faid feveral fums of money by faid other writing as aforefaid due, fo that the faid *H.* might have joined iffue thereupon in due form of law.

And the faid *T. L. J.* and *E.* for that they have above alledged fufficient matter in law for ~~them~~ the faid *T. L. J.* and *E.* to maintain their action againft the faid *H.* which they are ready to verify, which faid matter the faid *H.* doth not deny, nor any way answer thereto, but intirely refuseth to admit the verifying the fame, as before, pray judgment, and their damages by occafion of the premisses to be adjudged to them, &c. *And* Joinder in demurrer. becaufe the juftices here would advife themselves of and upon the premisses before they give judgment thereon, a day is given to the faid parties here until from the day of *St. Michael* in three weeks, to hear their judg-

Continuance by Cur. advifar. vult.

ment thereupon, for that the said justices here are not yet, &c. *

*Declaration in
case sur aff.
on a feigned
issue touching
a Modus deci-
mandi.*

— to wit, C. P. late of, &c. was attached to answer the right honourable D. lord H. of a plea of trespass upon the case: And whereupon the said D. lord H. by M. H. his attorney complaineth, Wherefore whereas on the 21st day of December in the 30th year of the reign of our lord the present king, at the parish of K. in the county aforesaid, a certain discourse was moved and had between the said D. lord H. and the said C. of and concerning three tenements of the said D. lord H. in the parish of K. aforesaid, with the lands thereunto respectively appertaining, formerly parcel of the possession of the late dissolved monastery of *Bellalanda*, otherwise *Byland*, in the county aforesaid, to wit, one tenement with the appurtenances then in the possession of one J. R. another tenement with the appurtenances then in the possession of one R. M. and another tenement with the appurtenances called *Great Combe*, then in the possession of one C. B. Upon which said discourse the said D. lord H. asserted and affirmed, that the proprietors and tenants of the said tene-

* Judgment for the defendant, because the plaintiff did not say in his replication that the defendant had assets *ultra*, to pay the 20*l.* for, if he had not, he is not obliged to pay the plaintiff the debt upon contract before the debt upon bond due at a day yet to come.
3 *Lev.* 57. S. C.

ment in the possession of the said *Y. R.* from the time to the contrary whereof the memory of man is not, have paid and been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, eight fleeces of wool, and 4*s.* of lawful money of *England*, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing and renewing upon the same tenement, and the lands thereunto belonging, within the parish aforesaid; *And* that for the whole time aforesaid the proprietors and tenants of the said tenement in the possession of the said *R. M.* have paid, and been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, 1*s.* 5*d.* of lawful money of *England*, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing, and renewing upon the same tenement and the lands thereunto belonging, within the parish aforesaid; *And* also that all the proprietors and tenants of the said tenement called *Great Combe*, from the time to the contrary whereof the memory of man is not to the contrary, have paid, and been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, ten fleeces of wool and two lambs, at the feast of *St. John* the Baptist, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing and renewing upon the same tenement, and the lands thereunto belonging, within the parish aforesaid: Which
said

Assumpfit.

saïd several prescriptions and manners of tithing the saïd C. then and there denied, asserting that the tithes for the same tenements are and have been payable in kind. And thereupon the saïd C. on the same 21st day of *December* in the 30th year aforesaid, at the parish of K. aforesaid, in consideration that the saïd D. lord H. at the special instance and request of the saïd C. had then and there paid to the saïd C. 50s. of lawful money of *England*, undertook and faithfully promised the saïd D. lord H. that if such prescription and manner of tithing concerning the saïd tenement in the possession of the saïd J. R. as the saïd D. lord H. then and there had asserted, was true, then he the saïd C. would well and truly pay 40s. of like lawful money to the saïd D. lord H. when afterwards he should be thereunto requested; and also, that if such prescription and manner of tithing concerning the saïd tenement in the possession of the saïd R. M. as the saïd D. lord H. then and there had asserted, was true, then he the saïd C. would well and truly pay other 40s. of like lawful money to the saïd D. lord H. when afterwards he should be thereunto requested: And further, that if such prescription and manner of tithing concerning the saïd tenement called *Great Combe*, as the saïd D. lord H. then and there had asserted, was true, then he the saïd C. would well and truly pay other 40s. of like lawful money to the saïd D. lord H. when afterwards he should be thereunto requested. And the saïd D. lord H.

Averment.

H.

H. in fact saith, that at the time of the said discourse such respective prescriptions and manners of tithing concerning the several and respective tenements aforesaid, as were asserted by the said *D. lord H.* as aforesaid, were and still are true; whereof the said *C.* afterwards, *to wit*, on the last day of *December* in the 30th year aforesaid, at the parish of *K.* aforesaid, had notice: *Neverthe- Breach,*
less the said *C.* no ways regarding his said several promises and undertakings, but contriving and fraudulently intending to deceive and defraud the said *D. lord H.* in the premisses, hath not yet paid the said several sums, amounting in the whole to 6 *l.* to the said *D. lord H.* (although the said *C.* on the 10th day of *January* in the 30th year aforesaid, and often afterwards, at the parish of *K.* aforesaid, was requested to pay the same); but he has hitherto intirely refused, and still doth refuse to pay him the same: Wherefore the said *D. lord H.* saith that he is injured, and hath damage to the value of 20 *l.* And thereof he bringeth suit, &c.

And the said *C.* by — his attorney *Plea.*
 cometh and defendeth the force and injury, when, &c. and saith that the said *D. lord H.* ought not to have his said action against him, because he saith, that well and true it is that he did undertake in manner and form as the said *D. lord H.* hath above declared against him; but the said *C.* further saith, as to the first promise in the said declaration specified, that the tithes from time to time growing, increasing and renewing
 upon

upon the tenement in the possession of the said *J. R.* always have been paid, and ought to be paid in kind; *Without this*, that the proprietors and tenants of the same tenements, from the time to the contrary whereof the memory of man is not, have been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, eight fleeces of wool, and 4*s.* of lawful money of *England*, yearly and every year, in lieu and compensation of tithes, growing, increasing and renewing upon the same tenement and the lands thereunto belonging, within the said parish, as the said *D. lord H.* above in his said declaration has alledged: And this he is ready to verify. And as to the second promise, &c. [the plea to the second and third promises respectively as above, the traverse to each in the very words of the prescription.] Wherefore he prayeth judgment, if the said *D. lord H.* ought to have his said action against him, &c.

Repliation.

And the said *D. lord H.* as to the plea of the said *C.* as to the first promise in the said declaration specified, saith that all the proprietors and tenants of the said tenement in possession of the said *J. R.* from the time to, &c. [in the words of the prescription] in manner and form as the said *D. lord H.* in his said declaration hath alledged; And of this he putteth himself upon the country: And the said *C.* doth so likewise, &c. And as to the said plea of the said *C.* as to the second promise in the said declaration specified,

fied, the said *D. lord H.* saith that [in the words of the prescription] in manner and form as the said *D. lord H.* in his said declaration hath alledged; And of this he putteth himself upon the country: And the said *C.* doth so likewise, &c. And as to the said plea of the said *C.* as to the third promise in the said declaration specified, the said *D. lord H.* saith, that [in the words of the prescription] in manner and form as the said *D. lord H.* in his said declaration hath alledged; and of this he putteth himself upon the country: And the said *C.* doth so likewise, &c.

— to wit, *A. S.* late of, &c. was at-
 tached to answer *W. S.* of a plea of trespass
 upon the case, &c. And whereupon the said
W. by *J. S.* his attorney complaineth, that
whereas H. S. brother of the said *A.* and *W.*
 now deceased, in his life-time, to wit, on
 the 9th day of *January* in the — year of,
 &c. was seised in his demesne as of fee, of
 and in a close called *B.* lying and being in
 the parish of *G.* in the county of *T.* and the
 said *H.* being so seised thereof, and then lan-
 guishing with a certain disease, declared that
 he the said *H.* then intended to convey to
 the said *W.* and his heirs for ever (the said
W. then being the youngest brother of the
 said *H.*) the said close, unless the said *A.*
 would consent and promise to pay to the
 said *W.* 20*l.* of lawful money of *England*:
 Of which said intention of the said *H.* the
 said *A.* afterwards, to wit, on the same day
 and year, at *D.* aforesaid, having notice, the

*Declaration in
 case Sur ass.
 The defendant,
 in consideration
 his elder bro-
 ther would not
 convey lands to
 his younger
 brother, pro-
 mises to pay
 him 20*l.**

said *A.* then being brother and heir apparent of the said *H.* in consideration that the said *H.* at the special instance and request of the said *A.* would forbear to convey the said close to the said *W.* undertook, and then and there faithfully promised the said *H.* that he the said *A.* would well and truly pay to the said *W.* the sum of 20*l.* of lawful money of *England*, when after the death of the said *H.* he should be thereunto requested. And the said *W.* in fact saith, that the said *H.* trusting to the said promise and undertaking of the said *A.* did forbear to convey the said close to the said *W.* and afterwards, *to wit*, on the 15th day of *January* in the ——— year of, *Ec.* at, *Ec.* died without issue of his body begotten, whereby the said close descended to the said *A.* as brother and heir of the said *H.* And also whereas the said *H.* in his life-time, *to wit*, on the said 9th day of *January* in the ——— year of, *Ec.* was seised in his demesne as of fee, of and in a certain other close in the parish of *D.* aforesaid, called *B.* and the said *H.* being so seised thereof, and then being in an ill state of health, the said *H.* on the said 9th day of *January* in the ——— year of, *Ec.* for the mutual love and affection which he then had towards the said *W.* his youngest brother, appointed a certain deed to be written and prepared, to be executed by the said *H.* by which the said *H.* would convey and assure the said other close to the said *W.* and his heirs for ever, in reversion immediately after the death of the said *H.* the said *A.* having
notice

notice thereof, and then being brother and heir apparent of the said *H.* afterwards, *to wit*, on the said 9th day of *January* in the — year of, *Éc.* at the parish of *D.* aforesaid, in consideration that the said *W.* at the instance and request of the said *A.* would consent and agree to prevent and obstruct the making and writing the said deed so as aforesaid appointed to be written by the said *H.* undertook, and then and there faithfully promised the said *W.* that he the said *A.* would pay to the said *W.* other 20*l.* of lawful money of *England*, when after the death of the said *H.* he should be thereunto requested. And the said *W.* further in fact saith, that he the said *W.* trusting to the said promise and undertaking of the said *A.* prevented and obstructed the writing and making the said deed, *to wit*, at the parish of *D.* aforesaid; and afterwards, *to wit*, on the said 15th day of *January* in the — year of, *Éc.* aforesaid, the said *H.* died at the said parish of *D.* without issue of his body begotten, whereby the said close descended to the said *A.* as brother and heir of the said *H.* Yet the said *A.* no ways regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W.* in the premisses, hath not paid the said several sums, which amount in the whole to the sum of 40*l.* or any part thereof, to the said *W.* (altho' after the death of the said *H.* *to wit*, on the — day of, *Éc.* in the — year, *Éc.* and often afterwards,

wards, at, &c. the said *A.* was thereunto requested by the said *W.*) but he hath hitherto intirely refused, and still doth refuse to pay him the same. Wherefore he saith he is injured, and hath damage to the value of 40*l.* And thereof he bringeth suit, &c.

*Declaration in
case Sur ass.
on a promise
of marriage.*

—, to wit, *J. R.* late of, &c. was attached to answer *P. P.* spinster, of a plea of trespass on the case, &c. And whereupon the said *P.* by *J. S.* her attorney complaineth. Wherefore *whereas* on the 25th day of *March* in the 8th year of the reign of our sovereign lord *George III.* now king of *England*, &c. at the castle of *York* a certain discourse was moved and had between the said *P.* and *W. P.* her father, and the said *J.* and *R. R.* his father, of a marriage to be had and solemnized between the said *P.* and the said *J.* and upon that discourse it was then and there agreed between all the said parties, that the said marriage should be had and solemnized upon the *Sunday* next after the feast of *Easter*, being the second day of *April* next ensuing, [other agreements between the *Fa-*thers for portions, &c. set forth] the said *J.* after the said agreement so made, *to wit*, on the said 25th day of *March* in the year aforesaid, at the castle of *York* aforesaid, in consideration thereof, and also in consideration that the said *P.* at the special instance and request of the said *J.* had then and there undertook, and faithfully promised the said *J.* that she the said *P.* would take the said *J.* for her husband, according to the said agreement, undertook, and then and there faithfully

faithfully promised the said *P.* that he the said *J.* would marry the said *P.* according to the said agreement. And the said *P.* in fact saith, that she and the said *W.* her father were always ready and often offered to perform the said agreement in all things on their and each of their parts to be performed, according to the form and effect of the said agreement. *And also whereas* the said *J.* on the 3d day of *April* in the 8th year aforesaid, at the said castle of *X.* in consideration that the said *P.* then and still being unmarried, at the special instance and request of the said *J.* being then also unmarried, had then and there agreed with the said *J.* and undertook and faithfully promised the said *J.* that she the said *P.* would take the said *J.* for her husband, undertook, and then and there faithfully promised the said *P.* that he the said *J.* would marry the said *P.* *Nevertheless* the said *J.* no ways regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *P.* in the premisses, did not marry the said *P.* (although on the 11th day of *April* in the 8th year aforesaid, and often before and afterwards, at the castle of *X.* aforesaid, he was thereunto requested by the said *P.*) but the said *J.* afterwards, *to wit,* on the 2d day of *December* in the 8th year aforesaid, at the castle of *X.* aforesaid, married one *A. L.* [an *Indeb. assumpsit*, for money lent, and an *Indeb. assumpsit* for money laid out.]

Laid over again.

Breach.

Other counts.

Plia.

*As to first
count, offered
to marry plain-
tiff, but she
re usid.*

Transse.

*To the second
count, the like.*

And the said *J.* by *L. R.* his attorney cometh and defendeth the force and injury when, &c. and saith that the said *P.* ought not to have her said action thereupon against him, because as to the first promise in the said declaration above supposed to be made, he saith, that after the time of the said promise and undertaking, and before the day of suing out the original writ of the said *P.* to wit, on the 30th day of *March* in the said 8th year of the reign of our said lord the present king, at the castle of *N.* aforesaid, he the said *J.* requested the said *P.* that she would be ready to take the said *J.* for her husband, according to the form and effect of the said agreement; but the said *P.* then and there intirely refused to do the same, and she was not ready to marry the said *J.* on the said 2d day of *April* in the said declaration mentioned: *Without this*, that the said *J.* refused to marry the said *P.* according to the said agreement, as the said *P.* has above declared against him; And this he is ready to verify. And as to the second promise in the said declaration above supposed to be made, he saith, that after the time of the said promise and undertaking, and before the day of suing out the original writ of the said *P.* to wit, on the 10th day of *April* in the 8th year aforesaid, at the castle of *N.* aforesaid, and often afterwards there, the said *J.* was ready and offered to the said *P.* to marry the said *P.* but the said *P.* then and there absolutely refused and denied to agree or consent thereto, and refused

to take the said *J.* for her husband: And this he is ready to verify. *And as to the* *As to the third count. Non assumpsit.* said promise for the said 30*l.* above supposed to be made, the said *J.* saith, that he did not undertake in manner and form as the said *P.* has thereupon above declared against him; And of this he putteth himself upon the country: *And the said P. doth* *Issue.* so likewise. *And as to 10*l.* parcel of the* *As to the fourth, Non assumpsit, as to part.* said 20*l.* in the said declaration mentioned, the said *J.* saith that he did not undertake in manner and form as the said *P.* hath above declared against him; And of this he putteth himself upon the country: *And the said P. does so likewise.* *And as to 10*l.** *Issue.* residue of the said 20*l.* the said *J.* saith that the said *P.* ought not to have her said action thereupon against him, because he saith, that after the time of the promise for the said 20*l.* above supposed to be made, and before the suing out the said original writ of the said *P. to wit,* on the 10th day of *February* in the 9th year of the reign of our lord the present king, at the castle of *W.* aforesaid, the said *J.* offered to the said *P.* the said 10*l.* residue of the said 20*l.* which said 10*l.* the said *P.* intirely refused to receive: And the said *J.* further saith, that he at all times afterwards hitherto was and still is ready to pay to the said *P.* the said 10*l.* and hath brought the same here into court ready to be paid to the said *P.* if she the said *P.* is willing to receive the same; And this he is ready to verify: Wherefore he prayeth

judgment if the said *P.* ought to have her said action thereupon against him, &c.

Replication as to the second plea, did not offer to marry her.

And the said *P.* as to the said plea of the said *J.* as to his second promise and undertaking above pleaded in bar, saith, that by any thing therein contained she ought not to be barred from having her said action against the said *J.* because she saith that the said *J.* after the time of the said promise and undertaking made, did not offer to the said *P.* to marry the said *P.* in manner as he in pleading hath above alledged; And this she prayeth may be inquired of by the country :

Ifc.

A demurrer to the first plea.

And the said *J.* doth so likewise, &c. And as to the said plea of the said *J.* above pleaded in bar to his said first promise and undertaking, the said *P.* saith, that the said plea and the matter therein contained are not sufficient in law to bar the said *P.* from having her said action against him; and that she hath no need, and is not by the law of the land bound to answer to the said plea in manner and form aforesaid pleaded. And for cause of demurring in law upon the said plea, the said *P.* according to the form of the statute in such case made and provided, sheweth to the court here the cause following, *to wit*, that the traverse in the said plea contained is immaterial and superfluous, and thereby a matter not traversable, which is not alledged in the said declaration, is traversed; And this she is ready to verify : Wherefore for default of a sufficient plea of the said *J.* in this behalf, the said *P.* prayeth judgment, and her damages by occasion of the

Cause of demurrer.

the not performing the said promise and undertaking, to be adjudged to her. And as to the said plea of the said *J.* as to the said 10*l.* parcel of the said 20*l.* in the said declaration mentioned, supposed as aforesaid to be tendered by the said *J.* the said *P.* saith that the said *J.* ought not to be admitted to say that he was at all times hitherto ready to pay the said 10*l.* to the said *P.* because she saith, that she the said *P.* heretofore, *to wit*, in *Easter* term last past, in the court here declared in the plea aforesaid against the said *J.* in manner and form aforesaid: And thereupon the said *J.* in the same *Easter* term, by his said attorney came and defended the wrong and injury, when, &c. and saving to himself all and all manner of advantages, exceptions and allegations whatsoever, as well to the said writ as to the said declaration, prayed leave thereupon to imparl here until on this day, *to wit*, on the morrow of the *Holy Trinity* thence next ensuing, and had it, &c. The same day was given to the said *P.* here, &c. as it sufficiently appears of record in the said court of our said lord the king here; And this she is ready to verify by the said record: Wherefore she prayeth judgment, if the said *J.* ought to be admitted to say that he was at all times hitherto ready to pay the said 10*l.* to the said *P.* &c.

And the said *J.* for that he hath above pleaded sufficient matter to bar the said *P.* from having her said action against him as to the first promise in the said declaration

Replication as to the tender, estoppel that it was pleaded after imparlance.

For order matter.

above-mentioned, which he is ready to verify, which said matter the said *P.* doth not deny, and hath not any ways answered the same, prayeth judgment, and that the said *P.* may be barred from having her said action as to the said promise against him, &c. And further, the said *J.* for that he hath above alledged sufficient matter in law to bar the said *P.* from having her said action against him for the said 10*l.* residue of the said 20*l.* in the said declaration specified, and is ready to verify the same, which said matter the said *P.* doth not deny, and hath not any ways answered thereto, but intirely refuseth to admit the verifying the same, prayeth judgment, and that the said *P.* may be barred from having her said action against him for the said 10*l.* &c.

Declaration by an administratrix in case Sur ass. to pay costs in chancery, in consideration that the intestate forsook to prosecute contempt, and gave day of payment.

Torkshire, to wit, *J. C.* late of, &c. was attached to answer *J. P.* administratrix of all and singular the goods and chattels which were of *W. P.* gent. at the time of his death, who *will intimate*, of a plea of trespass on the case, &c. And whereupon the said *J.* by *M. M.* her attorney complaineth, that *whereas* the said *J.* in the life-time of the said *W. P.* *to wit*, on the — day of, &c. intending to exhibit his bill of complaint in the high court of chancery of our lord the present king against the said *W.* sued out of the said court of chancery, the said court then being at *W.* in the county of *M.* a certain writ of our said lord the king of *Sub-pena*, directed to the said *W.* by which said writ our said lord the king commanded the

said

said *W.* that the said *W.* under the penalty of 100*l.* should be in the said court of chancery on the — day of, &c. next ensuing, to answer to those things which then and there should be objected against him the said *W.* Which said writ afterwards, and before the return thereof, *to wit*, on the — day of, &c. at, &c. the said *J.* caused to be delivered to the said *W.* and the said *W.* at the return of the said writ appeared in the said court of Chancery, according to the command of the said writ: And afterwards such proceedings were in the same court, that 23*l.* were adjudged by the said court of Chancery to the said *W.* again't the said *J.* for his costs, charges and expences, by reason and occasion of the unjust vexation of the said *J.* had and sustained by the said *W.* in the said court, as by the records and memorandums of the same, remaining at *W.* in the county of *M.* more fully appeareth. For obtaining which said 23*l.* the said *W.* afterwards, *to wit*, on the — day of, &c. issued forth out of the same court of Chancery, the said court then being at *W.* in the county of *M.* aforesaid, a certain writ of our said lord the king of *Subpoena* directed to the said *J.* by which said writ our said lord the king firmly injoining, commanded the said *J.* that he the said *J.* immediately after the receipt of the said writ, should pay, or cause to be paid to the said *W.* or to the bearer of the said writ, the said 23*l.* and that the said *J.* should in no wise omit this, under the penalty of 100*l.* Which said writ of *Subpoena* last mentioned, the said

Assumpsit.

*Assessment,
consideration
performed.*

W. afterwards, *to wit*, on the — — day of ~~not~~,
Et c. delivered to *A. B.* then and still one of
 the attornies of our lord the king of the
 bench here, and then the said *W.*'s solicitor
 in the said suit in Chancery, to the intent
 that the said *A. B.* should demand and re-
 ceive of the said *J.* the said 23*l.* to the use
 of the said *W.* And afterwards the said *A.*
 in the life-time of the said *W.* *to wit*, on the
 same day and year last aforesaid, at, *Et c.*
 shewed to the said *J.* the said last mentioned
 writ of *Subpoena*, directed to the said *J.* as
 aforesaid, and then and there demanded of
 the said *J.* the said 23*l.* according to the
 tenor of the said writ. And thereupon the
 said *J.* on the same day and year, at, *Et c.* in
 consideration that the said *A.* at the special
 instance and request of the said *J.* would
 stay one week for the said 23*l.* and would
 not sue forth any writ of attachment out of
 the said court of Chancery against the said
J. for not paying the said 23*l.* upon the
 demand aforesaid, undertook, and then and
 there faithfully promised the said *A. B.* that
 he the said *J.* would well and truly pay the
 said 23*l.* to the said *W.* when he the said
J. after the end of the said week then next
 ensuing should be thereunto requested. And
 the said *J.* in fact saith, that the said *W.*
 and *A. B.* trusting to the said promise and
 undertaking of the said *J.* did stay one week
 from thence next ensuing for the said 23*l.*
 and did not sue forth, nor did either of them
 sue forth at any time any writ of attachment
 against the said *J.* for or concerning the said
 23*l.*

22 *L* For the non-payment thereof: [*Indeb. ass. for 20 l.*] Yet the said *J.* not regarding *Breach.* his several promises and undertakings aforesaid, but contriving and fraudulently intending to deceive and defraud the said *W.* in his life-time, and the said *J.* after the death of the said *W.* hath not paid the said several sums of money, amounting in the whole to, &c. either to the said *W.* in his life-time, or to the said *J.* after the death of the said *W.* (to which *J.* administration of all and *Administration committed.* singular the goods and chattels, rights and credits which were of the said *W.* at the time of his death, after the death of the said *W.* *to wit*, on the — day of, &c. at, &c. by, &c. was in due manner committed) but intirely refused to pay the same to the said *W.* in his life-time, and to the said *J.* after the death of the said *W.* and still refuseth to pay the same to the said *J.* although the said *J.* was thereunto requested by the said *W.* in his life-time, and by the said *J.* after the death of the said *W.* *to wit*, on the — day of, &c. at, &c. Wherefore she saith she is injured, and hath damage to the value of 40 *l.* And thereon she bringeth suit, &c. And she bringeth here into court *Profert.* the said letters of administration, which testify the committing the said administration in form aforesaid, &c.

— to wit, *i. B.* late of, &c. was at- *Declaration in case Sur as-*
 tached to answer *C. D.* of a plea of trespass *sumpsit to*
 on the case, &c. And whereupon the said *C. D.* by — his attorney complaineth, *perform an*
 wherefore *whereas* on the — day of, &c. *award.*

at,

at, &c. a certain suit was moved and depending between the said *A.* and *C.* concerning, &c. To compromise and determine which, as well the said *A.* as the said *C.* put themselves upon the arbitration of *E. F.* and *G. H.* arbitrators indifferently chosen between them to award, order and adjudge of and concerning the said suit, so that the award should be given in by parol or in writing under the hands and seals of the said *E.* and *G.* before the — day of, &c. and if the said arbitrators should refuse or omit to make any award, order or judgment concerning the premises by the time aforesaid, then upon the arbitration of *J. K.* an umpire indifferently chosen and named by the said *A.* and *C.* to award of and concerning the premises, so that the umpirage should be given by parol or in writing under the hand and seal of the said *J. K.* before the — day of, &c. *In consideration whereof,* and in consideration that the said *C.* on the said — day of, &c. at, &c. aforesaid, at the special instance and request of the said *A.* had undertaken and promised to the said *A.* to pay to the said *A.* 20*l.* of lawful money of *England*, if he, the said *C.* should not perform and fulfil the award of the said arbitrators, or of the said *J.* to be made of and upon the premises in form aforesaid, in all things on his part to be performed and fulfilled, the said *A.* undertook, and on the said — day of, &c. at, &c. aforesaid, faithfully promised the said *C.* that if he the said *A.* should not perform the award or umpirage

umpirage aforesaid, to be made in form aforesaid of and upon the premisses, in all things on his part to be performed and fulfilled, then he the said *A.* would pay 20*l.* of lawful money of *England* to the said *C.* when he should be thereunto afterwards requested. And the said *C.* in fact saith, that the said arbitrators omitted to make any award of and upon the premisses before the said — day of, &c. and that the said *J.* in default thereof, having taken upon him the burthen of the said arbitrament, before the said — day of, &c. *to wit*, on the — day of, &c. at, &c. awarded, ordered and adjudged of and upon the said premisses in form following, *to wit*, that the said *A.* should pay : 1*l.* to the said *C.* on the — day of, &c. in full discharge of, &c. in or at the dwelling-house of one *L. M.* in *D.* aforesaid. And the said *C.* further in fact saith, that he the said *C.* was ready on the said — day of, &c. at the dwelling-house of the said *L. M.* to receive the said 10*l.* according to the form and effect of the said award; but the said *A.* not regarding the said award, did not pay the said 10*l.* to the said *C.* on the said — day of, &c. or at any time afterwards; by reason whereof the said *A.* ought to have paid the said 20*l.* to the said *C.* according to his said promise and undertaking: *Nevertheless* the said *A.* no ways regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud

defraud the said C. in this case, hath not paid the said 20 *l.* to the said C. (although the said A. afterwards, *to wit*, on the — day of, &c. and often afterwards, at, &c. aforesaid, was requested to pay the same by the said C.) but he hath hitherto refused, and still doth refuse to pay him the same: Wherefore he says he is injured, and has damage to the value of 30 *l.* And thereof he bringeth suit, &c.

Declaration in case, for building so near the plaintiff's windows as to deprive him of the light.

Cornwal, to wit, R. P. late of, &c. was attached to answer E. C. of a plea of trespass on the case: And *whereupon* the said E. by J. W. his attorney complaineth, *that whereas* on the 11th day of October in the year of our Lord 1775, and always afterwards, he the said E. was and still is possessed of and in a certain antient messuage with the appurtenances, situate, lying and being at P. aforesaid in the county aforesaid, in which said messuage now are, and for the whole time aforesaid and before were certain windows on the west part thereof, through which said windows he the said E. (until the obstructions and damage hereafter mentioned) of right ought to have and enjoy the chearful light and wholesome air which by and thro' the said windows entered and were conveyed into the said messuage, and also the use of the said messuage, without any obstruction, hindrance or damage, to the great benefit and advantage of him the said E. *Yet* the said R. not ignorant of the premises, but contriving and fraudulently and maliciously

ously intending in this behalf unlawfully to oppress him the said *E.* and to spoil and deprive him of the use and benefit of his said windows, and of his said messuage, the said *R.* afterwards, *to wit*, the said 1st day of *October* in the said year of our Lord 1735, and from that day to the 21st day of *May* in the year of our Lord 1777, at *P.* aforesaid in the county aforesaid, certain walls and other buildings lately erected and built so near to the said messuage, unlawfully and injuriously, and to the nuisance of the said messuage of the said *E.* continued, that by reason thereof not only the said windows of him the said *E.* were greatly darkened, obscured and obstructed, but also the rainwaters descending from the said buildings greatly damaged and spoiled the said messuage of the said *E.* by which he the said *E.* during all the time aforesaid lost and was deprived of the use and benefit of the light and air which would have entered and been conveyed into his said messuage by and through the windows aforesaid, if the said walls and buildings had not continued as aforesaid, but also the benefit, use and advantage of his said messuage, to the damage of him the said *E.* of 200*l.* And thereof he bringeth this *suit, &c.*

— *to wit*, *R. M.* late of, &c. was attached by the writ of our lord the king of privilege issuing out of the court here, to answer *T. P.* gent. one of the attornies of the court of our lord the king of the bench, *Declaration in case at the suit of an attorney, for doing a trench in a street, wherein*
of

*plaintiff fell
and broke his
leg.*

of a plea of trespass on the case: And whereupon the said *T.* in his proper person complaineth, that *whereas* in the town of *N. upon T.* aforesaid there is, and from the time to the contrary whereof the memory of man is not to the contrary, hath been a certain antient street called the *Side*, which said street is, and by the whole time aforesaid hath been the king's highway for all subjects of our lord the present king and his predecessors, kings and queens of *England*, to go, pass over and ride, in, by and through the said street, at their will and pleasure; *Yet* the said *R.* not ignorant of the premisses, on the ——— day of, &c. without any lawful warrant dug and made a trench in the said street cross great part of the said street, and did not take care to fill and stop up the same with earth; whereby the said *T.* being a subject of our said lord the present king, afterwards, *to wit*, on the ——— day of, &c. at the said town of *Newcastle upon Tyne*, in the night-time of the same day, not knowing of the said trench, riding upon his horse in and thro' the said street, fell with his horse into the said trench, and thereby the leg of the said *T.* was broken, and the said *T.* was greatly hurt and bruised; and also his said horse was greatly injured, to the damage of the said *T.* of 500*l.* And thereof he bringeth suit, &c.

*Declaration in
case by an ex-
ecutor durante
minoritate,*

Middlesex, to wit, *B. T.* late of the *Middle Temple, London*, esq; was attached to answer *T. S.* gent. executor of the testament and

~~and~~ ^{for procuring} ~~last~~ will of *R. S.* esq; deceased, during the minority of *R. S.* son of the said *R. S.* ^{*R. H.* who} esq; deceased, of a plea of trespass upon the case: And whereupon the said *T. S.* by *R.* ^{was indebted to the plain-} *G.* his attorney complaineth, wherefore ^{tiff's testator,} ~~whereas~~ the said *R. S.* in his life-time here- ^{to confess a} ~~fraudulent~~ tofore, that is to say, in the term of *St. Mi-* ^{judgment,} ~~chael~~ in the 29th year of the reign of the ^{whereby plain-} ~~lord Charles II.~~ late king of *England*, &c. in ^{tiff was de-} the court of the said late king, before the ^{ferred of rec-} king himself, (the said court being at *W.* in ^{overing the} the county of *M.* aforesaid) by the consideration of the said court had recovered against one *R. H.* a certain debt of 100*l.* and also 30*s.* for his damages, which he had sustained by occasion of the detaining that debt whereof he was convicted, as by the record thereof now remaining in the court of our lord the king at *W.* aforesaid, in full force and vigour, no ways reversed, annulled, or in any manner satisfied, more fully appeareth. *And whereas also* the said debt and damages being no ways paid or satisfied, and the said *R. H.* being further indebted to the said *R. S.* in the sum of 108*l.* of lawful money of *England*, for the rent of a certain messuage with the appurtenances, situate in the parish of *St. Martin's in the Fields* in the said county of *M.* then held by the said *R. H.* of the said *R. S.* for a certain term of years then unexpired, the said *R. S.* made his testament and last will in writing, and of his said testament constituted the said *T.* executor, and afterwards died; and the said *T.* in due form of law proved the said testament, and took upon him the burthen of the execution

By original in
B. R.
Carth. 3. S. C.
Comb. 51.

*Plaintiff's testator recovered a judgment against R. H. for 101*l.* 10*s.**

*R. H. also indebted to testator in 108*l.* for rent.*

Testator made his will, appointed plaintiff executor, and died.

*Judgment for
plaintiff on a
Sci. Fa.
brought on the
said judgment.*

*R. H. posses-
sed of divers
goods and
chattels.*

*Plaintiff in-
tended to sue
out a Fi. Fa.
and also to sue
for the rent.*

*Defendant
fraudulently
caused a judg-
ment to be
signed against
the said R. H.
at the suit of
M. W.*

cution thereof. *And whereas* after the death of the said R. S. that is to say, in the term of *Easter* in the 32d year of the reign of the said lord the late king, in the said court of the said late king, before the king himself here, that is to say, at *W.* aforesaid, it was considered by the same court, that he the said *T.* executor, should have his execution against the said *R. H.* for the debt and damages aforesaid, according to the force, form and effect of the said recovery, as by the record thereof remaining in the same court more fully appears. *And whereas also* at the said time of adjudging that execution, the said *R.* was possessed of and in divers goods and chattels to the value of 200*l.* then being in the said messuage, as of his own proper goods and chattels; *And* the said *T.* intended to sue out a writ of *Fi. Fa.* upon the said judgment to the sheriff of *Middlesex* aforesaid, to cause the said debt and damages to be made of the said goods and chattels, and also to prosecute at law the said *R. H.* for the said rent as aforesaid due and then being in arrear; the said *B.* well knowing the premisses, and maliciously contriving, and with the said *R. H.* conspiring to deprive the said *T.* of his said several debts, to obtain the said goods and chattels to the proper use of the said *B.* the said *B.* afterwards unduly and fraudulently caused and procured a certain judgment to be signed in the said court of the said late king, before the king himself, against the said *R. H.* for 160*l.* of debt, at the suit of one *M. W.* and

to be inrolled of record as of the term of the Holy Trinity in the 32d year aforesaid; *When* When nothing due to him, in truth and in fact the said *R. H.* was not indebted to the said *M.* in the said 160*l.* or any part thereof: *And* the said *B.* by pretext of a certain writ of the said late king of execution upon the said judgment, prosecuted And the goods of R. H. to be taken in execution and delivered to defendant. out of the said court, and directed to the sheriff of the county of *M.* aforesaid, on the 18th day of *June* in the year of our Lord 1680. the said goods and chattels of the said *R. H.* out of the said messuage to be amoved, and to the said *B.* to be delivered, then and there fraudulently caused and procured, and the said goods and chattels to places unknown to the said *T.* carried away, conveyed and converted to his own use: *And* R. H. absconded, and cannot be arrested. the said *R. H.* to places to the said *T.* also unknown, has also elcaped, and by any process of law from that time hitherto cannot be taken and arrested; *Whereby* the said *T.* hath wholly lost not only several sums of money expended by him in suing for the said debts, Whereby has lost his said debts, &c. but also the said several debts, to the damage of the said *T.* of 50*l.* *And* thereof he bringeth suit, &c.

And the said *B.* by *B. K.* his attorney cometh and defendeth the force and injury when, &c. and saith, that the matter contained in the said writ and declaration are not sufficient in law for the said *T.* to have maintained his said action against the said *B.* To which said matter the said *B.* hath no need, nor is he bound by the law of the land to answer; *And* this he is ready to verify: Demurrer.

Wherefore he prayeth judgment, if the said *T.* ought to maintain any action against the said *B.* in this case, &c.

Joinder.

And the said *T. S.* for that he hath above declared sufficient matter in law to maintain his said action against the said *B. T.* which he is ready to verify, which said matter the said *B.* doth not deny, nor in any manner answer thereto, but wholly refuseth to admit the verification thereof, prayeth judgment, and his damages by the occasion aforesaid, to be adjudged to him, &c. *But because* the court of our said lord the king now here is not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid, before our lord the king, from the day wheresoever, &c. to hear their judgment of and upon the premisses, for that the court of our said lord the king now here is not yet, &c.

*Cur. advisar.
&c.*

Judgment given for the plaintiff, and affirmed in parliament.

*Declaration in
case Sur le
Stat. de Scand.
Mag.*

Middlesex, to wit, *T. B.* late of, &c. was attached to answer the right honourable *E.* lord *G.* baron of —, one of the peers and great men of this realm, who sueth as well for our lord the king as for himself, in a plea of trespass upon the case, &c. And thereupon the said lord *G.* who as well, &c. by *H. H.* his attorney complaineth, that whereas the said lord *G.* on the 29th day of *October* in the 19th year of the reign of our said lord the king, and long before, was, and ever since hath been, and yet is one of the barons

“barons and peers of this realm, and for all the time aforesaid hath had and yet hath a seat and vote in the parliament of *Great Britain*, as one of the peers of this realm: Nevertheless the aforesaid *T.* contriving and maliciously designing, against the form of the statute in that case made and provided, to raise great scandal of and concerning the said lord *G.* whereby discords might arise between the said *G.* and other peers, and great men and other subjects of this realm, and to hurt, injure and impair the good name, credit, state, dignity and honour of the said lord *G.* on the said 29th day of *October* in the 19th year aforesaid, at *W.* in the said county of *M.* in a certain discourse which he the said *T.* then and there had of and concerning the said lord *G.* in the presence and hearing of divers of his majesty’s faithful subjects, falsely and maliciously spoke, related, published, and with a loud voice declared of and concerning the said lord *G.* these false, scandalous and defamatory words here next following, that is to say, *He* (meaning the said lord *G.*) *is a worthless fellow, and a little great lord, and his word* (meaning the word of the said lord *G.*) *is not worth two-pence: He* (meaning again the said lord *G.*) *has honour, but uses none.* And the said *T.* out of his further malice contriving and maliciously designing, against the form of the said statute, to raise a great scandal of and concerning the said lord *G.* whereby discords might arise between the said lord *G.* and other peers and great men, and other subjects of this

realm, and to hurt, injure and impair the good name, credit, state, dignity and honour of the said lord G. afterwards, ~~that is to~~ say, on the 23d day of *March* in the 19th year aforesaid, at *W.* aforesaid, in another discourse which he the said *T.* then and there had with one *T. C.* of and concerning the said lord G. in the presence and hearing of divers others of his majesty's faithful subjects, falsely and maliciously spoke, related, published, and with a loud voice declared of and concerning the said lord G. the false, scandalous and defamatory words here next following, that is to say, *He, &c.* And also the further false, scandalous and defamatory words here next following, *it is true, &c.* By reason of the speaking, relating, publishing and declaring of which said several false, scandalous and defamatory words, the said *L. G.* is hurt in his reputation, honour and dignity; and the said lord G. hath lost the grace, good opinion and estimation of his present majesty, and the peers of this realm; and divers rumours and scandals amongst the peers of this realm, by the occasion aforesaid, are raised and divulged, and discords thereupon by the occasion aforesaid are risen between the said lord G. and the peers and great men, and other subjects of this realm, and daily more and more are likely to arise, to the great disturbance of the public tranquillity of this realm, in contempt of his present majesty, and to the great scandal and detriment of the said lord G. and against the form of the statute, to the damage of the
said,

And lord G. who as well, &c. of 5000*l*. And thereof the said lord G. as well for our said lord the king as for himself bringeth this ~~case, &c.~~

Middlesex, to wit, J. C. late of, &c. was attached to answer to F. D. in a plea of trespass upon the case, &c. And whereupon the said F. by S. N. his attorney complaineth, *That whereas* he the said F. is a good, true, pious, faithful and honest subject of this kingdom, and as a good, true, pious, faithful and honest subject of this kingdom, from the time of his nativity hitherto hath demeaned and behaved himself, and until the time of the speaking of the false and scandalous words first hereafter mentioned to have been spoken by the said J. was accounted, esteemed and reputed a person of good name, fame, condition, conversation and reputation, and as a faithful and honest subject of this kingdom he the said F. D. always kept himself free and clear from theft, robbery, and all such enormous crimes; and by reason of his said good name, fame, condition, conversation and reputation, the said ~~F. D.~~ had obtained the love and good will of all his neighbours, and other faithful and honest subjects of this kingdom: *And whereas* he the said F. now useth and exerciseth, and for divers years now last past has used and exercised the trade of a carpenter, and thereby and by reason of his good name, credit and reputation therein, hath during the time aforesaid got and endeavoured to get his livelihood in support of himself and

Declaration in case for scandalous words spoken of a tradesman, charging the defendant with theft; special damage laid.

family: *Nevertheless* the said J. well knowing the premises, but contriving and maliciously intending to deprive him the said F. of his good name, fame, credit, esteem and reputation aforelaid, and to bring him into scandal, reproach and displeasure, as well amongst all grave and venterable persons, as other faithful and honest subjects of this kingdom, and especially amongst his friends and customers, and to hinder him in the exercise of his said trade, and also to cause the said F. D. to be punished according to the laws and statutes of this kingdom made and provided against those who commit felonies and robberies, on the 11th day of January in the year of our Lord 1774, at Uxbridge in the said county, in a certain discourse which the said J. then and there had with divers subjects of this kingdom, of and concerning the said F. did falsely and maliciously, in the presence and hearing of those subjects, speak and utter of and concerning the said F. certain false, scandalous and detamatory words, *to wit, He (meaning the said T. D.) has broke open my brother T.'s scrutore, and robbed him (meaning T. C. brother of him the said T.) of 27 guineas and some half-pence. And* the said J. of his further malice prepenfed against the said F. afterwards, *to wit,* on the same day and year, at U. aforelaid, in a certain other discourse which the said J. then and there had with divers other subjects of this kingdom, of and concerning the said F. did falsely and maliciously, in the presence and hearing of those subjects, speak and utter of
and

and concerning the said *F. D.* certain other false, scandalous and defamatory words, *to wit*, *The rogue* (meaning the said *F.*) ~~robbed my house~~, (meaning the dwelling-house of the said *J.*) and *broke open my brother's scrutore*, and *has took some money from him*, (meaning the ~~fore~~ said *T. C.* the said *J.*'s brother) and *I* (meaning again the said *J.*) *will swear it*: Whereas in truth the said *F.* is not guilty of any offence by the said several scandalous words laid to his charge. By reason of which speaking of the said several false, scandalous and defamatory words, the said *F.* is greatly scandalized, hurt and injured in his good name, fame, credit, esteem and reputation aforesaid, and is greatly hurt and damnified in his said business, insomuch that divers persons, *to wit*, *G. W.* and *J. G.* who were used and accustomed to employ the said *F.* in his said trade and business of a carpenter, by reason of speaking the said words, suspect him to be guilty of the crimes thereby laid to his charge, and have refused, and still do more and more refuse to employ him in his said business, or to have any dealings or concerns whatsoever with him; and the said *F.* is very much prejudiced and hindered in the exercise of his said trade, to the damage of the said *F.* 500*l.* And thereof he bringeth suit, &c.

Special damage laid.

Leiceſter, to wit, *W. S.* late of *W.* in the county aforesaid, yeoman, was attached by the writ of our lord the king of privilege, issuing out of the court here, to answer *T. B.* Gent one of the attornies of the court of our lord the king of the bench here, of

Declaration in case for scandalous words

plea of trespass upon the case, &c. And whereupon the said T. in his proper person complaineth, wherefore *whereas* the said T. is a good, true and faithful subject of our lord the present king, and of good name, fame and condition, and from the time of his birth hitherto has behaved and demeaned himself as a good, true and faithful subject of our lord the present king, and for all that time has remained without any kind of falsity, perjury, or stain of any hurtful crime: And also whereas the said T. for divers years now last past, was and still is one of the attornies of the court of our lord the present king of the bench here, and has hitherto behaved and demeaned himself rightly and honestly according to his ability and skill in all causes of his clients, whole attorney the said T. has been in the said court here, and by reason of the faithful and honest exercise of his office of an attorney in the same court of the bench, and prosecuting the causes of his clients, justly and honestly, gained and acquired many fees and much profit for the support and maintenance of himself and his family, and was daily likely to gain more and more: *Nevertheless*, the said W. not ignorant of the premisses, but contriving and maliciously intending unjustly to injure the said T. and to hurt, take away and injure his good name, fame, credit, and esteem, and to bring the said T. into ignominy and infamy, as well amongst his neighbours as amongst all his clients, and to deprive the said T. of his gain and profit which he might after-

Afterwards gain by reason of the honest exercise of his office of an attorney, on the 20th day of *February* in the 30th year of the reign of our said lord the present king, at the borough of *L.* having communication and discourse with divers subjects of our said lord the king concerning the said *T.* and the exercise of his said office of an attorney, openly and publicly said, spoke and published these false, opprobrious and malicious words following, *to wit, He* (meaning the said *T.*) *is a perjured knave and a rogue, and I.* (meaning himself the said *W.*) *will prove it.* By pretext of speaking and publishing of which said false, opprobrious and malicious words, the said *T.* is not only greatly hurt and injured in his good name, fame and reputation, amongst many honourable and venerable persons, and other subjects of our said lord the present king, whose attorney the said *T.* then and before was in the said court of the bench, but also the said *T.* lost divers sums of money which the said *T.* used to get and gain of his clients for the honest exercise of his said office of an attorney, and by that occasion divers of his clients and other persons with whom the said *T.* before that time used to converse, have intirely left the said *T.* Wherefore he saith that he is injured, and hath damage to the value of 100*l.* And thereof he bringeth suit, &c.

And the said *W.* by *F. S.* his attorney Plea, as to cometh and defendeth the force and injury *part not guilty.* when, &c. And as to the words (*And a rogue*)

Issue.

As to the residue, justifies.

A suit brought by defendant.

The declaration.

rogue) above specified in the declaration of the said *T.* the said *W.* saith, that he is not guilty of speaking and publishing the same, as the said *T.* above complainer against him; And of this he putteth himself upon the country: And the said *T.* hath so likewise, &c. And as to the speaking and publishing the residue of the words expressed in the same declaration, the said *W.* saith that the said *T.* ought not to have his said action thereupon against him, because he saith, that long before the time of speaking and publishing those words, the said *W.* in the court of our lord the present king of the bench at *W.* in the county of *M.* and before the then justices of our said lord the king of the same court, impleaded one *F. C.* by the name of *F. C.* late of *H.* in the county aforesaid, weaver, for that the said *F.* with force and arms had broke and entered the said close of the said *W.* at *H.* aforesaid, and had broke and spoiled the gates of the said *W.* there lately erected, to the value of 40s. and had broke and spoiled a pump of the said *W.* there also lately being, to the value of 60s. and had taken and carried away the water of the said *W.* to the value of 10s. there lately found, and had done other injuries to him, to the great damage of the said *W.* and against the peace of our lord the present king, &c. And whereupon the said *W.* by *J. M.* his attorney complained, that the said *T.* on the 20th day of *December* in the 21st year of the reign of our lord the present king, with force and arms, &c. had broke and entered

the close of the said *W.* called *Home-yard* at *H.* [the whole declaration recited.] And thereof he brought suit, &c. To which said *Plea.* ~~the~~ the said *F.* by *J. C.* his attorney appeared in the same court of our said lord the king of the bench, before the justices of our said lord the king of the same court, and in the same court afterwards, *to wit*, in the term of the *Holy Trinity* next ensuing, by his said attorney came and defended the force and injury when, &c. And as to the whole trespass aforesaid, except the breaking the close, and taking and carrying away the said water, said that he was in nothing guilty thereof, as the said *W.* above complained against him; And of that he put himself upon the country: And the said *W.* did so likewise, &c. And as to the said breaking the close, and taking and carrying away the said water, above supposed to be done, the said *F.* said that the said *W.* ought not to have his said action thereupon against him, &c. because he said, that before the said time in which the said trespass was above supposed to be done, *to wit*, on the ~~1st~~ day of *December* in the 21st year aforesaid, and from that time until the said time, and at the said time in which, &c. there was a great drought and want of water in the town of *H.* aforesaid, and the said *W.* at the said time in which, &c. being a parishioner of the said town, and a neighbour to the said *F.* and being willing to supply the said *W.* in his wants with water from the said pump of the said *W.* gave the said *F.* licence

cence to enter into the said close called *Home-yard*, and from the said pump to take and carry away the said water to his own use; by virtue of which licence the said ~~W.~~ the said time in which, &c. entered into the said close of the said *W.* call'd *Home-yard*, and from the said pump ~~W.~~ and carried away the said water, as it was lawful for him to do; which was the said trespass, as to the breaking the said close, and taking and carrying away the said water, whereof the said *W.* then above complained against him; And this he was ready to verify: Wherefore he prayed judgment if the said *W.* ought to have his said action thereupon against him, &c. And the said *W.* as to the said plea of the said *F.* as to breaking the said close, and taking and carrying away the said water above pleaded in bar, said that he ought not by any thing therein alledged to be barred from having his said action against the said *F.* because he said that he the said *W.* did not give to the said *F.* licence to enter into the said close, and to take and carry away the said water from the said pump to his own proper use, as the said *F.* ~~W.~~ above in pleading alledged; And he prayed that this might be inquired of by the country: And the said *F.* did so likewise, &c. Therefore, as well to try the said issue as the said other issue joined between the said parties, the sheriff was commanded to cause to come before the said justices of our lord the king of the bench aforesaid, from the day of the *Holy Trinity* in three weeks, twelve, &c.

Second issue.
Venire.
awardd.

&c. By whom, &c. And who neither, &c.
 To take cognizance, &c. Because as well,
~~&c.~~ *At which day* the jury between the *Nisi prius.*
 said parties in the plea aforesaid was there-
 upon respited between them until from the
 day of St. Michael in three weeks then next
 ensuing, unless the justices of our lord the
 present king assigned to take the assizes in
 the county aforesaid by form of the statute,
 &c. should first come on *Thursday* the 14th
 day of *July* then next ensuing, at the castle
 of *L.* in the county aforesaid, for default of
 the jurors, because none of them came. *At Trial.*
which said *Thursday* the 14th of *July* in the
 22d year aforesaid, at the castle of *L.* afore-
 said, before Sir *T. T.* knt. and Sir *H. W.*
 knt, justices of our lord the king of the
 bench, and justices of our said lord the king
 assigned to take the assizes in the county of
L. aforesaid, by the form of the statute, &c.
 came as well the said *W.* as the said *F.* by
 their attornies aforesaid; And the jurors of
 that jury, *to wit*, [naming them] being de-
 manded, also came, and to speak the truth
 of the premisses were chosen, tried and sworn.
 Upon which the said *T. B.* being then and *Plaintiff, pro-*
 there produced as a witness on the behalf of *duced as a*
 the said *F.* for decrease of the damages of *witness, gave*
 the said *W. S.* in the said second issue, and *false evidence.*
 then and there before the justices and jury
 aforesaid, being charged and sworn upon the
 Holy Evangelists of God to give to the said
 jury true evidence concerning the said issue
 between the said parties, the said *T.* then
 and there upon his oath voluntarily, fully
 and

and corruptly, to the said jury gave in evidence, deposed and swore, that all the town-wells in *H.* afore said, at the time the said trespass was done, were dried up; ~~when in~~ truth, at the time the said trespass was done, there were in *H.* afore said four town-wells, to wit, the conduit, the sweet well, ~~and~~ all, *Ward's* pump and *Worth's* pump, which then run with water, and were not dried up; whereby the said *T. B.* then and there committed voluntary perjury; and by reason thereof the said *W. S.* afterwards, to wit, on the 20th day of *February* in the 30th year of the reign of our lord the present king, at the borough of *L.* afore said, spoke and published of the said *T. B.* the said residue of the words in the declaration of the said *T.* specified, to wit, *He is a perjured knave, and I will prove it*, as he lawfully might; And this he is ready to verify: Wherefore he prayeth judgment, if the said *T.* ought to have his said action thereupon against him, &c.

Declaration in Middlesex, to wit, W. M. late of, &c. case for a malicious prosecution in indictment against plaintiff's wife, and *B.* his wife, were attached to answer to *J. S.* of a plea of trespass upon the case, &c. And whereupon the said *J.* by *J. J.* his attorney complaineth, that the said *B.* contriving, and maliciously and wickedly intending unjustly to grieve, oppress, weary and impoverish him the said *J.* and put him to great expence, without any reasonable cause, and of her mere malice conceived against the said *J.* and *M.* his wife, at his present majesty's general sessions of the peace held at
Hicks's

Hicks's Hall in *St. John's Street*, in and for the county of *Middlesex*, upon *Monday* the 28th day of *August* in the sixth year of his present majesty's reign, before *E. B.* esq; *T. R.* bar. *J. G.* knt. *J. C.* esq; and others their companions, his said majesty's justices assigned to keep the peace in the said county of *M.* and also to hear and determine divers felonies, trespasses and misdemeanors committed in the said county, falsely and maliciously caused and procured *M.* the wife of the said *J.* to be indicted by the name of *M.* the wife of *J. S.* late of the parish of *St. Paul Covent-Garden*, for that she the said *M.* [as in the indictment] crown and dignity : And the said indictment was so falsely and maliciously prosecuted, and caused to be prosecuted against the said *M.* by her the said *B.* and at her instigation until afterwards, to wit, at his said majesty's general sessions of the peace held at *H. H.* aforesaid, in and for the said county of *M.* upon *Monday* the 4th day of *December* in the said 6th year of his present majesty's reign, before *E. B.* *J. M.* *T. A.* esqs; and others their companions, then his said majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, she the said *M.* was duly acquitted of the premisses in the said indictment above imputed to her, by a jury of the county, and the judgment of the said court: By reason whereof he the said *J.* the same day and year last mentioned, and many times

times as well before as afterwards, at *W.* in the said county of *M.* was forced to lay out divers sums of money in the defence of the said *M.* his wife in this behalf, and to undergo great trouble and labour about the same, to the damage of the said *J.* of 9 *l.* 19 *s.* And thereof he brings his suit, &c.

Averment of the identity of the parties.

And the said *J.* averreth, that the said *W. M.* named in the said declaration, and *W. M.* named in the said indictment, is one and the same person, and not any other or different person, and that the said *B.* named in the said declaration, and the said *B.* named in the said indictment, is one and the same person, and not any other or different person.

Declaration in case Surtover by assent of the effects of a bankrupt, upon their own possession.

Wilts. to wit, *E. D.* late of, &c. and *R. M.* late of, &c. were attached to answer to *J. G.* and *R. P.* assignees of the debts, goods and chattels of *S. L.* a bankrupt, according to the form of the statutes made concerning bankrupts, of a plea of trespass upon the case; *And* whereupon the said *J.* and *R.* by *S. S.* their attorney complain, *That* they the said *J.* and *R.* on the — day of — in the year of our Lord — at *B.* in the said county of *W.* were possession of thirty broad cloths, of the value of 600 *l.* as of their own proper goods and chattels (they being as aforesaid assignees of the debts, goods and chattels of the said bankrupt); *And* being thereof so possessed, they the said *J.* and *R.* the said thirty broad cloths out of their hands and possession casually lost and mislaid; which said thirty broad cloths afterwards, *to wit*, the day and year aforesaid,

at *B.* aforesaid, came to the hands and possession of them the aforesaid *E.* and *R.* by finding; And though the aforesaid *E.* and *R.* new the aforesaid cloths to be the proper goods and chattels of the aforesaid *J.* and *R.* and to them as assignees of the debts, goods and chattels of the aforesaid *S. L.* the bankrupt, of right to belong and appertain: Yet they the aforesaid *E.* and *R.* contriving and fraudulently retaining the aforesaid *J.* and *R.* of the aforesaid cloths to deceive and defraud, have not delivered the aforesaid cloths or any of them to the aforesaid *J.* and *R.* although they have by them been often requested to deliver the same: But they the aforesaid *E.* and *R.* afterwards, to wit, the day and year aforesaid, at *B.* aforesaid, to their own proper use did convert and dispose of the aforesaid cloths, to the damage of them the aforesaid *J.* and *R.* 600*l.* And thereof they bring suit, &c.

Somersetshire, to wit, *E. A.* late of, &c. Declaration in was attached to answer to *M. B.* widow, in *case Sur trover* a plea of trespass upon the case: And where-*for money.*
upon the said *M.* by *W. H.* her attorney complaineth, That whereas the said *M.* on the 29th day of *February* in the year of our Lord 1736 at *M.* aforesaid was possessed of the monies following, to wit, six pieces of gold coin of this kingdom, commonly called *Jacobus's*, and twelve other pieces of another gold coin of this kingdom, commonly called *Carolus's*, of the value of 20*l.* and of other 20*l.* in monies, numbered as of her own proper monies; and being so possessed there-

of, the said *M.* afterwards, *to wit*, on the same day and year, at *M.* aforesaid, casually lost the said monies out of her hands and possession; which said monies afterwards, *to wit*, at the same time and place, came to the hands and possession of the said *E.* by finding them: *Yet* the said *E.* knowing the said monies to be the proper monies of the said *M.* and to her of right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *M.* of the monies aforesaid, hath not yet delivered her the said monies, though often requested so to do: But the said *E.* afterwards, *to wit*, at the same time and place, converted and disposed of the same to her own use; Whereby the said *M.* saith she is prejudiced and damaged to the value of 50*l.* And thereof she bringeth suit, &c.

Declaration *at London*, to wit, *A. B.* late of, &c. and *as Sir Robert E.* his wife, were attached to answer *C. D.* in a plea of trespass on the case, &c. And where upon the said *C.* by *W. R.* his attorney complaineth, *That whereas* the said *C.* on the — day of — in the year of our Lord 1729. at *L.* aforesaid, in the parish of *St. Bride*, otherwise *Bridget*, in the ward of *Parish without*, was possessed of the goods and chattels following, namely, of one gold watch, &c. to the value of 200*l.* as of his own goods and chattels; and being to possess thereof, the said *C.* afterwards, *to wit*, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward

ward aforesaid, casually was deprived of and lost those goods and chattels out of his hands and possession; which said goods and chattels afterwards, *to wit*, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward aforesaid, by finding came to the hands and possession of the said *E.* whilst she was single and unmarried: Yet the said *E.* whilst she was single and unmarried, and the said *A.* and *E.* after the celebration of the marriage between them, knowing those goods and chattels to be the proper goods and chattels of him the said *C.* and of right to belong and appertain to him the said *C.* Nevertheless, contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *C.* in this particular, hath not nor have (though often requested so to do) delivered those goods and chattels to the said *C.* but hath and have converted and disposed of those goods and chattels afterwards, *to wit*, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward aforesaid, to the proper use and advantage of her the said *E.* while she was single and unmarried, and to the proper use and advantage of them the said *A.* and *E.* after the celebration of their said marriage, namely, the ——— day of ——— in the year of our Lord 1775, at *L.* aforesaid, to the damage of the said *C.* 200 *l.* And thereof he bringeth suit, &c.

Yorkshire, to wit, *J. H.* late of the parish of *N.* in the county aforesaid, Esq; was attached to answer *W. P.* Esq; of a plea of

Declaration in case for throwing down a dam, and di-

verting a water course. trespass upon the case. And whereupon the said *W.* by *T. L.* his attorney complaineth, that the said *J.* on the 14th day of *May* in the 32d year of the reign of our lord the present king, unjustly and maliciously broke, threw down and prostrated great part of a certain ancient dam in and upon the river *D.* in the parish aforesaid, and thereby for a great time, *to wit*, from the said 14th day of *May* in the thirty-second year aforesaid, until the feast of *St. Michael* the archangel then next ensuing diverted and hindered great part of the water of the said river from its antient and usual course to and towards a water corn-mill of the said *W.* situate upon the said river in the parish of *O. M.* whereby the said *W.* lost the benefit and profit of his said mill for the whole time aforesaid. Wherefore the said *W.* saith, that he is injured, and hath damage to the value of 100*l.* And thereof he bringeth suit, &c.

Plea, the defendant was on defendant's freehold.

And the said *J.* by ——— his attorney cometh and defendeth the force and injury, &c. and saith, that the said *W.* ought not to have his said action thereupon against him, because he saith, that before the time of breaking, throwing down, and prostrating the said dam, *to wit*, on the first day of *May* in the 31st year of the reign of our lord the present king, he the said *J.* was seised in his demesne as of fee, of and in an antient water corn-mill in *N.* aforesaid, and also of and in six acres of land next adjoining on the part of the said mill, in which six acres of land the said dam in the said de-

claration of the said *W.* mentioned, from the time to the contrary whereof the memory of man is not, had been made for conveying and directing a water-course from the said river *D.* to the said antient mill, and for the whole time aforesaid was repaired and maintained by the said *J.* and other tenants for the time being of the said antient mill without the contribution of any other person whatsoever, or for any other use than for conveying a water-course from the said river for wheeling about by the fall of the said water, and turning the wheels of his said antient mill. And the said *J.* further saith, That the said antient mill on the said first day of *May* in the 31st year aforesaid was by accident intirely burnt and destroyed by fire. And because the said *J.* did not intend to rebuild the said antient mill, the said *J.* afterwards, *to wit*, on the said 14th day of *May* in the 32d year aforesaid, broke, threw down and prostrated great part of the said dam, being built in and upon the said six acres of land, the freehold of the said *J.* and disposed and converted the stones and lime coming therefrom to his own proper use, as it was lawful for him to do. Which is the same, &c. And this, &c.

London, to wit, *O. J.* late of, &c. was attached to answer unto *J. S.* of a plea of trespass on the case, &c. And thereupon the said *J.* by *G. H.* his attorney complaineth, That *whereas* the said *J.* on the 16th day of *July* in the year of our Lord 1735. at *London*, to wit, in the parish of *St. Mary*

*Declaration in
case of selling
an unsound
horse, war-
ranteeing him to
be sound.*

le Bow in the ward of *Cheap* bargained with the said *O.* to buy of the said *O.* a certain gelding of the said *O.*'s, and the said *O.* then and there well knowing the said gelding to be unsound, and labouring under and afflicted with a certain distemper called the *Glanders*, by warranting the said gelding to be sound in all respects, then and there falsely and fraudulently bargained and sold the said gelding, as and for a gelding sound in all respects, to the said *J.* for a large sum of money, *to wit*, for 5*l.* 5*s.* which said gelding was then and there unsound, and afflicted with and labouring under the same distemper called the *Glanders*, and so always afterwards there remained: And thus the said *O.* on the said 16th day of *July* in the year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, falsely and fraudulently deceived the said *J.* to the said *J.*'s damage of 20*l.* And thereof he bringeth suit, &c.

Hilary term in the thirteenth year of the reign of king George the third.

*Declaration
for records.*

Kent, *W. M.* late of *C.* in the said county *to wit*, *W.* was attached to answer to *F. R.* in a plea of trespass on the case, &c. and whereupon the said *F.* by his attorney complains, That *whereas* he the said *F.* is a good, true, pious, faithful and honest subject of this kingdom, and as a good, true, pious,

pious, faithful and honest subject of this kingdom hath hitherto demeaned and behaved himself, and as a good, true, pious, faithful and honest subject of this kingdom from the time of his nativity until the speaking, uttering and publishing of the scandalous, false, malicious and defamatory words first herein after mentioned to be spoken of the said *E.* was reputed and esteemed among all faithful and honest subjects of this kingdom with whom he dealt and conversed, and to whom he was known, and never was guilty of theft, robbery, fraud, or any such hurtful and odious crimes, nor until the speaking, uttering and publishing of the false, scandalous, malicious and defamatory words herein after first mentioned of the said *E.* was ever suspected to be guilty of those crimes or any of them: And the said *E.* by reason of his good name, fame and reputation aforesaid, had obtained the love and good-will of all his neighbours and other faithful and honest subjects of this kingdom with whom he conversed and had dealings: *Nevertheless* he the said *W.* well knowing the premisses, but contriving and maliciously and wickedly intending to injure, defame and slander the said *E.* and to deprive him of his good name, fame, credit and reputation aforesaid, and bring him into scandal, contempt and reproach, as well among all his neighbours, and friends, as other faithful and honest subjects of this kingdom, and to cause him to be punished according to the laws of this kingdom, made and provided

M 4

against

against theft, robbery, felony and fraud, on the eighteenth day of *March* in the year of our Lord one thousand seven hundred and thirty-eight at *Chatham* aforesaid, in a certain discourse which the said *W.* then and there had with divers subjects of this kingdom of and concerning the said *F.* did falsely, wickedly and maliciously speak, utter and publish of and concerning the said *F.* in the presence and hearing of those subjects, certain false, scandalous, malicious and defamatory words, *to wit*, *He* (meaning the said *F.*) *is an old rogue, and has robbed me* (meaning him the said *W.*); *And* the said *W.* of his further malice premeditated against the said *F.* afterwards, *to wit*, on the same day and year at *Chatham* aforesaid, in a certain other discourse which the said *W.* then and there had with divers other subjects of this kingdom of and concerning the said *F.* did falsely, wickedly and maliciously, and without any reasonable or probable cause whatsoever, publish and declare in the presence and hearing of those subjects, *that the said F. had robbed him*; by reason of the speaking, uttering and publishing which said several false, scandalous, malicious and defamatory words so spoken, uttered and published by the said *W.* of the said *F.* as aforesaid, and of the publishing of the said slander, he the said *F.* is greatly hurt, injured, prejudiced and damaged in his good name, fame, credit and reputation: *And whereas* he the said *F.* now is, and for divers years now last past has been a servant of our sovereign lord the king,

king, and foreman of the king's yard at *Chatbam* afore said, and has behaved himself well and honestly in his said office: Nevertheless the said *W.* well knowing the premises, but contriving and maliciously intending to defame and injure the said *F.* and to deprive him of his said office, whilst he the said *F.* was in his said office of foreman of the king's yard at *Chatbam* afore said, *to wit*, on the day and year afore said at *Chatbam* afore said, in a certain discourse which the said *W.* then and there had with divers subjects of this kingdom of and concerning the said *F.* did falsely, wickedly and maliciously speak, utter and publish of and concerning the said *F.* and his behaviour in the execution of his said office, in the presence and hearing of those subjects, certain false, scandalous, malicious and defamatory words, *to wit*, *That his master R.* (meaning and pointing at the said *P.*) *that old villain and rascal, who is a good for-nothing old rascal, and not fit to be employed in the king's service: And* the said *W.* of his further malice prepened against the said *F.* afterwards, *to wit*, on the same day and year at *Chatbam* afore said, in a certain other discourse which the said *W.* then and there had with divers other subjects of this kingdom of and concerning the said *F.* and his behaviour in the execution of his said office, did falsely, wickedly and maliciously speak, utter and publish of and concerning the said *F.* and his behaviour in the execution of his said office, in the presence and hearing of those subjects, certain
other

other false, scandalous, malicious and defamatory words, *to wit*, *He* (meaning the said *F.*) *is a good-for-nothing old rascal, and not fit to be employed in the king's service: And* the said *W.* of his further malice prepened against the said *F.* afterwards, *to wit*, on the same day and year at *Chatham* aforesaid in a certain other discourse, which the said *W.* then and there had with divers other subjects of this kingdom, of and concerning the said *F.* and his behaviour in the execution of his said office, did falsely, wickedly and maliciously, and without any reasonable or probable cause whatsoever, publish and declare in the presence and hearing of those subjects, *that the said F. cheated and defrauded his majesty in the execution of his said office; where-* as the said *F.* is not thereof guilty; by reason of the speaking, uttering and publishing of which said several false, scandalous, malicious and defamatory words, 3dly and 4thly above-mentioned, so spoken, uttered and published by the said *W.* of the said *F.* and of the publishing the said slander lastly above mentioned, he the said *F.* is greatly hurt, prejudiced and injured in his good name, fame and reputation, to the damage of the said *F.* of two hundred pounds: And thereupon he brings suit, &c.

Not guilty.

And the said *W.* by *T. II.* his attorney comes and defends the wrong and injury, when, &c. and saith that he is not guilty of the premises as the said *F.* above in his declaration hath alledged against him: And of this he puts himself upon the country; and the

the said *F.* does so likewise: *Therefore* the Venire a-
 sheriff is commanded that he cause to come *award.*
 here, on the octave of the purification of the
 blessed *Mary*, twelve good, &c. by whom,
 &c. and who neither, &c. to recognize,
 &c. because as well, &c.

*Hilary term in the fourteenth year of
 king George the third.*

*To the justices of our lord the king of the
 bench.*

London, *R.* *B.* gent. one of the attornies of *Bill against*
to wit, the court of our lord the king, *an attorney of*
 before the king himself, by *J. S.* his attor- *the C. B. at*
 ney, complains of *B. S.* gent. one of the at- *the suit of an*
 tornies of the court of the said lord the king *attorney of the*
 of the bench here, present here in court in *K. B. for*
 his own proper person, in a plea of trespass *causing plain-*
 on the case; For that *whereas* as well by the *tiff to be ar-*
 king's royal dignity, as by antient custom, *rested contrary*
 from time whereof the memory of man is *to this privi-*
 not to the contrary, all and singular the at- *le. e. &c. on*
 tornies of the said court of the said lord the *a C. ad re-*
 king before the king himself attending the *spondendum*
 same court, and prosecuting and defending *at the defen-*
 suits therein for their clients, have not nor *dant's suit.*
 ought to be sued or impleaded elsewhere
 than in the said court of the said lord the
 king before the king himself (pleas of free-
 hold only excepted): *And whereas* he the
 said *R.* now is, and for divers years now
 last

last past hath been, one of the attornies of the said court of the said lord the king before the king himself attending the said court, and prosecuting and defending suits therein for his clients: *Nevertheless* the said *B.* well knowing the premisses, but contriving and maliciously intending to injure and oppress the said *R.* contrary to the said custom and his said privilege, whilst he the said *R.* was one of the attornies of the said court of the said lord the king before the king himself as aforesaid, and whilst he the said *B.* was one of the attornies of the said court of the said lord the king of the bench here, *to wit*, on the fourth day of *August* in the fourteenth year of the reign of the said lord the king, did wrongfully and maliciously cause and procure the said *R.* to be arrested and held to special bail in *London* aforesaid by the then sheriffs of *London* aforesaid, by virtue of a writ of the said lord the king of *capias ad respondendum*, issuing out of the court of our said lord the king of the bench here, at the suit of the said *B.* and directed to the then sheriffs of *London* aforesaid, for the arresting of the said *R.* in a certain plea of trespass, and also in a certain plea of trespass upon the case upon promise, to the damage of the said *B.* of 30*l.* By reason whereof the said *R.* was imprisoned by the said sheriffs of *London* for a long time, *to wit*, for the space of twelve hours, for want of bail for his appearance to answer to the said *B.* in his pleas aforesaid, and was put unto and sustained great expences in and about procur-

ing

ing his discharge from his said imprisonment, to the damage of the said R. of forty pounds: And thereupon he prays relief, &c.

Pledges, &c.

On reference to Mr. C. by consent of both sides he awarded, that the defendant should pay plaintiff 10*l.* 10*s.* and proceedings to stay.

*Michaelmas term in the thirteenth year
of king George the third.*

Suffex, *J. W.* late of — in the said county *Declaration to wit,* — was attached to answer to *H.* for keeping a *B.* esq; in a plea of trespass on the case, &c. *dog that worried the plaintiff's sheep.* And whereupon the said *H.* by his attorney complains, *That whereas* the said *J.* on the twenty-fifth day of *March* in the year of our Lord 1739, at — — — — — afore said, did keep a dog, well knowing that the said dog was used and accustomed to bite and worry sheep; which dog so kept by the said *J.* as afore said, on the same day and year, at *Wivelsfield* afore said, did bite and worry divers sheep and lambs, *to wit,* thirty sheep and thirty lambs of the said *H.* so that part of those sheep and lambs of the said *H.* *to wit,* four sheep and two lambs of the price of six pounds died thereof, and the residue of those sheep and lambs were very much injured, damaged and lessened in value: *And where-*

as the said *J.* on the said twenty-fifth day of *March* in the year aforesaid, at *Wivelsfield*, did keep a bitch, well knowing that the said bitch was used and accustomed to bite and worry sheep; which said bitch so kept by the said *J.* as aforesaid, on the same day and year, at *Wivelsfield* aforesaid, did bite and worry divers other sheep and lambs, *to wit*, thirty other sheep, and thirty other lambs of the said *H.* so that part of those sheep and lambs of the said *H.* *to wit*, four sheep and two lambs of the price of six pounds died thereof, and the residue of those sheep and lambs were very much lessened in value, to the damage of the said *H.* of 20*l.* And thereupon he brings suit, &c.

*Hilary term in the eleventh year of king
George the third.*

*Declaration in
case upon a
special promise
to sell wines
delivered to
him by the
plaintiff, or
to return the
same, or be
accountable.* *Suffex, J. R.* late of _____ in the said
to wit, J. county, yeoman, was attached to
answer *H. B.* the younger, in a plea of tres-
pals on the case, &c. and whereupon the said
H. by _____ his
attorney complains, *That whereas* the said
J. on the first day of *October* in the year of
our Lord one thousand seven hundred and
seventy, at *Chichester* in the said county, in
consideration that the said *H.* at the special
instance and request of the said *J.* would de-
liver to the said *J.* a hogshead of wine of the
said

said *H.* to be carried by the said *J.* from ~~*Cbichester*~~ *Horsbam* afore-
 said to *Horsbam* in the said
 county for hire and reward, to be therefore
 paid by the said *H.* to the said *J.* assumed
 upon himself, and then and there faithfully
 promised the said *H.* that he the said *J.*
 would sell and dispose of the said hogshead
 of wine at *Horsbam* afore-
 said for the benefit
 and profit of the said *H.* or would bring the
 same back to the said *H.* at *Cbichester* afore-
 said *gratis*, or else would be accountable for
 it to the said *H.* And whereas the said *J.* af-
 terwards, *to wit*, on the day and year afore-
 said at *Cbichester* afore-
 said, in consideration
 that the said *H.* at the like special instance
 and request of the said *J.* would deliver to
 the said *J.* another hogshead of wine of the
 said *H.* to be carried by the said *J.* from
Cbichester afore-
 said to *Horsbam* afore-
 said for
 hire and reward, to be therefore paid by the
 said *H.* to the said *J.* assumed upon himself,
 and then and there faithfully promised the
 said *H.* that he the said *J.* would sell and dis-
 pose of the said hogshead of wine for the be-
 nefit and profit of the said *H.* or would bring
 back the same to the said *H.* at *Cbichester*
 afore-
 said *gratis*, or else would be account-
 able for it to the said *H.* and although the
 said *H.* giving credit to the said promises
 and assumptions so made by the said *J.* in
 form afore-
 said, afterwards, *to wit*, the same
 day and year at *Cbichester* afore-
 said, deliver-
 ed to the said *J.* the said two hogsheads of
 wine of the said *H.* for the purpose afore-
 said; and although the said *J.* afterwards, *to*
wit,

Breach.

*Special promise
to sell wine
and render ac-
count thereof.*

wit, the same day and year, carried the said two hogheads of wine so delivered to him as aforesaid, from *Chichester* aforesaid, to *Horsham* aforesaid: *Nevertheless* the said *J.* not regarding his said several promises and assumptions made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *H.* in this respect, did not sell or dispose of the said two hogheads of wine, or either of them, for the benefit and profit of the said *H.* at *Horsham* aforesaid, or elsewhere; neither did the said *J.* bring back the said two hogheads of wine, or either of them, to the said *H.* at *Chichester* aforesaid, or elsewhere; neither has the said *J.* in any manner accounted with the said *H.* for the same, or any part thereof, (although he the said *J.* afterwards, *to wit*, on the first day of *November* in the said year of our Lord one thousand seven hundred and seventy, at *Chichester* aforesaid, was requested by the said *H.* to perform his said several promises and assumptions,) but the said *J.* has hitherto wholly refused, and still doth refuse either to sell and dispose of the said hogheads of wine, or either of them, for the profit and benefit of the said *H.* or to bring back the same to the said *H.* or in any manner to account with the said *H.* for the same: *And whereas* the said *J.* afterwards, *to wit*, on the said first day of *October* in the said year of our Lord one thousand seven hundred and seventy at *Chichester* aforesaid, in consideration that the said *H.* at the special instance and request
of

of the said J. would deliver to the said J. another hoghead of wine of the said H. to be carried by him from thence to *Horsham* aforesaid for hire and reward, and there to be sold and merchandized by him the said J. for the benefit and profit of the said H. to be accounted for by the said J. when he should be thereunto afterwards requested, assumed upon himself, and then and there faithfully promised the said H. that he the said J. would sell the said last mentioned hoghead of wine at *Horsham* aforesaid for the benefit and profit of the said H. and would render an account thereof to the said H. when he should be thereunto afterwards requested: *And whereas* the said J. afterwards, *to wit*, the same day and year at *Chichester* aforesaid, in consideration that the said H. at the special instance and request of the said J. would deliver to the said J. another hoghead of wine of the said H. to be carried by him the said J. from thence to *Horsham* aforesaid for hire and reward, and to be sold and merchandized by him the said J. for the benefit and profit of the said H. to be accounted for by the said J. when he should be thereunto afterwards requested, assumed upon himself, and then and there faithfully promised the said H. that he the said J. would sell the said last mentioned hoghead of wine for the benefit and profit of the said H. and would render an account thereof to the said H. when he should be thereunto afterwards requested; and altho' the said H. giving credit to the two last

Breach.

mentioned promises and assumptions of the said J. so made in form aforesaid, afterwards, *to wit*, on the said first day of *October* in the year aforesaid at *Chichester* aforesaid, delivered to the said J. the said two last mentioned hogsheds of wine for the purpose aforesaid: *Nevertheless* the said J. not regarding his said two last mentioned promises and assumptions made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said H. in this respect, did not sell and merchandize the said two last mentioned hogsheds of wine, or either of them, for the benefit and profit of the said H. and account with the said H. for the same, or any part thereof, (altho' the said J. afterwards, *to wit*, the said first day of *November* in the year of our Lord one thousand seven hundred and seventy aforesaid, at *Chichester* aforesaid, was requested by the said H. so to do,) but has hitherto wholly refused, and still refuses to sell and merchandize the same for the benefit and profit of the said H. and to account with the said H. for the same, to the damage of the said H. of twenty pounds: And thereupon he brings suit, &c.

Plea,
Nonassumpsit.

And the said J. by his attorney cometh and defendeth the force and injury when, &c. and saith, he did not assume upon himself in manner and form as the said H. hath above complained against him; and of this he puts himself upon the country; and the said H. likewise: *Therefore* the sheriff is commanded, that he cause

Issue:
Venire a-
warded.

to

to come here twelve, &c. By
 nom, &c. And who are neither, &c. To
 acknowledge, &c. Because as well, &c.

Middlesex, to wit, *H. E.* late of
 in the said county, gentleman, was attached
 to answer *P. S.* esq; in a plea of trespass, that
 the said *H. E.* contriving and maliciously in-
 tending unjustly to vex, disquiet and greatly
 injure the said *P.* on the 12th day of *Febru-*
ary in the term of *St. Hilary* in the tenth year
 of the reign of our sovereign lord the pre-
 sent king, prosecuted out of the court of
 our said lord the king of common bench at
W. in the county of *M.* in the name of *C.*
K. but without his assent, consent, agree-
 ment or notice, a certain writ of our said
 lord the king, of *Capias ad respondendum*
 against the said *P.* by the name of *P. S.* late
 of the *Middle Temple*, gent. directed to the
 sheriff of the said county of *M.* whereby it
 was commanded to him, that the said then
 sheriff should take the said *P.* if he should
 be found in his bailiwick, and him safely
 keep, so that he might have his body before
 the justices of our said lord the king at *W.*
 from the day of *Easter* in fifteen days then
 next ensuing, to answer the said *C. K.* on a
 certain plea of trespass on the case, upon
 promise in the same writ specified; and for
 not performing thereof, to the damage of
 the said *C. K.* of 20 *l.* By pretext of which
 said writ the then sheriff of the said county
 of *M.* after the issuing the said writ, and
 before the return thereof, to wit, on the 8th
 day of *April* in the 11th year of the reign of

*Declaration in
 case against a
 practiser for
 suing out a
 writ against
 the plaintiff,
 in the name of
 C. K. with-
 out C. K.'s
 consent.*

Challenge.

our said lord the present king, at the parish of *St. Clement Danes* in the said county of *M.* at the prosecution and solicitation of the said *H.* and without the assent or notice of the said *C.* took and arrested the said *P.* by his body; and thereupon the said *H.* without the assent or notice of the said *C.* greatly injured the said *P.* to the damage of the said *P.* of 200*l.* And thereof he bringeth suit, &c.

Challenge.

Challenge at Nisi prius to the array of the panel, because the plaintiff was undersheriff, and arrayed the panel.

Suffolk, *AND* now at this day, that is to wit, *A* to say, *Friday* the 27th day of *August* in the 10th year of the reign of the said king, at *Bury St. Edmund's* aforesaid, come the aforesaid *A.* in his proper person, and the said *S.* by his said attorney, and the jurors impanelled in this cause are demanded and came, and thereupon the aforesaid *S.* challengeth the array of the panel aforesaid, because he saith that the said panel was arrayed by the said *A.* now and at the time of the said arrayment made under sheriff of the said county of *S.* and deputy of *J. C.* esq; sheriff of the same county; And this the said *S.* is ready to verify: Wherefore he prayeth the judgment of this court thereupon, and that the said panel may be quashed, &c.

Wm. Whitaker.

Covenant.

Covenant.

Middlesex, *G. F.* late of *Cavendish-Square* in *Declaration in*
to wit, the said county of *M.* esq; *covenant.*
 otherwise called the honourable *G. F.* esq;
 lieutenant-general of the island of *St. Christopher*, was summoned to answer to *T. B.* in
 a plea, that he keep with him the covenant
 made between them, according to the force,
 form and effect of certain articles of agree-
 ment thereof made between the said *T. B.*
 and the said *G. F.* and *M. W.* and *J. A.* &c.
And whereupon the said *T.* by *R. B.* the
 younger his attorney saith, that *whereas* by
 certain articles of agreement indented and
 made at *W.* in the said county of *M.* on the
 17th day of *January* in the year of our Lord
 1776, between the said *T. B.* of *R.* in the
 county of *C* miner, of the one part, and the
 said *G. F.* *M. W.* and *J. A.* by the names of
 the honourable *G. F.* esq; lieutenant-general
 of the island of *St. Christopher's*, *M. W.* of
 the city of *Bristol*, whitawer, and *J. A.* of
 the island of *Spanish Town*, surgeon, as well
 on behalf of themselves, as others their co-
 partners and sharers of and in certain mines
 and mineral works in the island of *Spanish*
Town in the *British* leward *Carribee* islands in
America, one part of which said articles, *Profert.*
 sealed with the seal of the said *G. F.* the said
T. B. bringeth here into court, bearing date
 the same day and year, the said *T. B.* for and
 in consideration of the wages or salary there-

in mentioned, did covenant and agree to and with the said *G. F. M. W.* and *J. A.* their and each of their executors, administrators and assigns, in manner following, *to wit*, That the said *T. B.* from time to time, and at all times during the term of seven years, to be, commence and be accounted from the time of his the said *T. B.*'s arrival at the island of *Spanish Town* aforesaid, should and would well and faithfully, and to the utmost of his skill and judgment, work for and serve the said *G. F. M. W.* and *J. A.* and other their copartners, their and each of their executors, administrators and assigns, as overseer and director in the sinking and working their copper, and other mines and mineral works, lying and being in the island of *Spanish Town* aforesaid, or in any other the *British* leeward *Carribbee* islands aforesaid, and do and perform business relating to the said mines, and the produce thereof, as they the said *G. F. M. W.* and *J. A.* and other their copartners, any or either of them, should from time to time direct and appoint; And also that he the said *T. B.* should not nor would, without leave first had and obtained, absent himself from the service aforesaid, nor voluntarily nor negligently waste or destroy any the goods, wares or materials of the said *G. F. M. W.* and *J. A.* and their said copartners, but in and concerning all and singular the said business and service aforesaid to be true and faithful, and do and perform the same according to the best of his knowledge, and to the utmost benefit

and advantage of the said *G. F. M. W.* and *J. A.* and their said copartners, their executors, administrators and assigns. *And* in consideration of the premisses, the said *G. F. M. W.* and *J. A.* jointly and severally for themselves and their said copartners, and their and each of their executors and administrators, did covenant, promise and agree, to and with the said *T. B.* his executors and administrators, by the said articles in manner following; that is to say, *That* they the said *G. F. M. W.* and *J. A.* and their copartners, some or one of them, or some or one of their executors or administrators, should and would pay unto the said *T. B.* his executors and administrators, for the first year of the said term before mentioned, the sum of 20*l.* of lawful *British* money, and for every other year of the said term of seven years the sum of 30*l.* of like lawful money, and so proportionably, as salary or wages for the work and service to be by him done and performed as aforesaid; *And* also pay and allow him 5*s.* per ton for every ton of copper which during the said term should be raised and dressed by the direction and assistance of him the said *T. B.* All which said wages and monies were to be paid and payable quarterly, by equal portions; *And* likewise find and provide him competent and sufficient meat, drink, washing and lodging, during the said term. *And* it was agreed by and between all and singular the said parties, that in case the said *G. F. M. W.* and *J. A.* and other their copartners, should be mind-

ed and desirous to determine and make void the said articles, at the expiration of ~~one~~ year from the commencement thereof, or at any time afterwards during the said term, and should give to the said *T. B.* one month's notice thereof in writing, then and after the expiration of such one month, the said term thereby contracted for, as well as the said articles, should cease and be void; any before contained to the contrary notwithstanding. *And* it was agreed by and between the said parties, that the said *G. F. M. W.* and *J. A.* their executors and administrators, some or one of them, should and would at their expence, costs and charges, find and provide a passage for the said *T. B.* to the said mines in *Spanish Town* aforesaid; and, if they dismissed him from their service before the expiration of the said term thereby contracted for, to return him back to *England* again expence-free, if he should chuse to return at the time of their so dismissing him, as in and by the said articles of agreement more fully appeareth. *And* although the said *T.* in pursuance of the said articles of agreement, afterwards, *to wit*, on the 21st day of *August* in the year of our Lord 1717, arrived at the said island of *Spanish Town* in foreign parts, and did there well and faithfully, and to the utmost of his skill and judgment, work for and serve the said *G. M.* and *J.* and their copartners, as overseer and director in the sinking and working their copper and other mines and mineral works lying and being in the island of *Spanish Town* aforesaid,

First breach.

aforesaid, and other the *British Caribbee islands* aforesaid, and did and performed business relating to the said mines and the produce thereof, as they the said *G. M.* and *J.* and other their copartners did from time to time direct and appoint, for a certain time, *to wit*, for the space of one year and a half then next following; by reason whereof a certain sum of money, *to wit*, the sum of 35 *l.* of lawful money of *Great Britain*, became due and payable to the said *T.* for his salary and wages aforesaid: *Nevertheless* the said *G. M.* and *J.* or any of them, or their said copartners or any of them, did not pay to the said *T.* the said 35 *l.* or any part thereof, but wholly neglected and refused to pay the same, and the said 35 *l.* are still due and in arrear to the said *T.* *And* the said *T.* further *Second breach.* saith, that the said *G. M.* and *J.* or any of them, or their said copartners or any of them during the said service of the said *T.* or any part thereof, did not find and provide for him competent and sufficient meat, drink, washing and lodging, or any meat, drink, washing or lodging whatsoever, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid, but neglected so to do, contrary to the form and effect of that covenant. *And* the said *T.* further saith, that du- *Third breach.* ring the said time that he the said *T.* was in the said services aforesaid, thirteen tons of copper ore were raised and dressed in the said mines and mineral works in the said island of *Spanish Town*, by the direction and assistance

ance of him the said *T.* by reason whereof 65*s.* of lawful money of *Great Britain* became due and payable to the said *T.* ~~to wit,~~ 5*s.* for each of those thirteen tons of oar: *Nevertheless* the said *G. M.* and *J.* did not nor did any of them pay to the said *T.* the said 65*s.* or any part thereof, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid, but wholly neglected to pay the same, and still refuseth to pay the same to the said *T.* contrary to the form and effect of that covenant. *And* the said *T.* saith, that the said *G. M.* and *J.* did not, nor did any of them find and provide at their or any of their expence, costs and charges, a passage for the said *T.* to the said mines in *Spanish Town* aforesaid, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid, but neglected so to do, contrary to the form and effect of that covenant. *And* the said *T.* further saith, that although the said *G. M.* and *J.* at the end of the said one year and an half dismissed the said *T.* from their said service in the island of *Spanish Town* aforesaid; and although he the said *T.* then and there upon his said dismissal gave notice to the said *G. M.* and *J.* that he was minded and willing to return back to *England*, and then and there requested them to return him back to *England* expence-free, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid:

Fourth breach.

Fifth breach.

aforesaid: *Nevertheless* the said G. M. and J. did not, nor did any of them return the said T. back to *England* expence-free, according to the form and effect of the said covenant of the said G. M. and J. so made with the said T. in that respect as aforesaid, but neglected and refused so to do, contrary to the form and effect of that covenant: *And* so the said T. saith, that the said G. (although often requested) hath not kept with the said T. his said covenant so made with him the said T. in that respect as aforesaid, but hath broke it, and hath hitherto wholly denied and still denieth to keep the same with the said T. Whereby the said T. saith that he is injured, and hath damage to the value of 200 l. And thereof he bringeth suit, &c.

And the said G. by J. S. his attorney co-*Plea.* meth and defendeth the force and injury when, &c. and saith that the said T. ought not to have or maintain his action aforesaid against him; *Because*, as to the said breach *As to the first breach.* of covenant by the said T. first above assigned, the said G. saith, that they the said G. M. and J. paid to the said T. all the salary and wages due to him from them, for the work and service by him done and performed, according to the form and effect of the said covenant in this behalf made, *to wit*, upon the 21st day of *February* in the year of our Lord 1740. at *W.* aforesaid: And of this he putteth himself upon the country. *And* as to the said breach of covenant *secondly* above assigned, the said G. saith, *As to the second breach,* that the said G. M. and J. did, during all the

the time that the said *T.* continued in the said service, find and provide for him competent and sufficient meat, drink, washing, and lodging, according to the form and effect of the said covenant in this behalf made:

As to the third breach.

And of this the said *G.* putteth himself upon the country. And as to the said breach of covenant thirdly above assigned, the said *G.* saith, that the said *G. M.* and *J.* paid and allowed to the said *T.* 5 s. per ton for every ton of copper oar which was raised and dressed in the said mines and mineral works in the said articles mentioned, by the direction and assistance of the said *T.* according to the form and effect of the said covenant in this behalf made, *to wit*, upon the said 21st day of *February* in the said year 1740. at *W.* aforesaid: And of this he putteth himself upon the country.

As to the fourth breach.

And as to the said breach of covenant fourthly above assigned, the said *G.* saith, that the said *G. M.* and *J.* did find and provide at their own expence, costs and charges, a passage for the said *T.* to the said mines in *Spanish Town* aforesaid, according to the form and effect of the said covenant in his behalf made, *to wit*, upon the 21st day of *May* in the said year of our Lord 1777. at *W.* aforesaid: And of this the said

As to the fifth breach.

G. putteth himself upon the country. And as to the said breach of covenant lastly above assigned, the said *G.* saith, that the said *G. M.* and *J.* at the end of the said one year and an half did not dismiss the said *T.* from their said service in the island of *Spanish Town* aforesaid, as the said *T.* hath by his said

said declaration above alledged: And of this also the said G. putteth himself upon the country.
Geo. Wilson.

Herefordshire, to wit, J. T. late of the pa-
rish of W. in the said county, husbandman, *Declaration in*
was summoned to answer to E. J. and M. *covenant on a*
J. in a plea, that he keep with them the co-
venant between them made, according to *lease for not*
the force, form and effect of a certain in-
denture thereof between them made, &c. *repairing, and*
for committing
waste.
Hil. 11 G. 2.
ro. 1392.

And whereupon the said E. and M. by R. M.
their attorney say, *That whereas* by a certain
indenture made at the parish of W. afore-
said, on the 7th day of February in the year
of our Lord 1772. between the said E. and
M. by the names of E. J. and M. J. both
of the parish of W. aforesaid in the county
of H. aforesaid, spinsters, in trust and to the
use of J. J. their nephew, being then under
the age of twenty-one years, of the one part,
and the said J. by the name of J. T. of the
parish of W. aforesaid and county aforesaid,
husbandman, of the other part, *Recital of*
leases
The coun-
terpart of which said indenture, sealed with
the seal of the said J. the said E. and M.
bring here into court, bearing date the same
day and year, the said E. and M. for the
consideration therein mentioned, demised,
granted, let and to farm let, unto the said
J. his executors, administrators and assigns,
All that messuage or tenement wherein the
said J. then dwelt, situate, lying and being
at L. in the several parishes of W. and G. in
the county of H. aforesaid, together with
the
Profert.
Demise.
Premises.

the outhouses, barns, stables, sheep-cotes, buildings, gardens and orchards, lands, arable, meadow and pasture, coppice of wood, known by the several names of *M.* and *T.* (but the fore parlour, and likewise one room or chamber in the said dwelling-house which was above the parlour, and also one part of the little garden wherein the stocks grew, were excepted and reserved to the use of the said *E.* and *M.* their heirs and assigns) together with all ways, waters, water-courtes, easements, privileges, profits and appurtenances thereto belonging or in any wise appertaining, unto the said *J.* his executors, administrators and assigns; *To have and to hold* all and singular the said dwelling-house or tenement, out-houses, barns, stables, sheep-cotes, buildings, edifices, gardens and orchards, lands arable, meadow and pasture, with their and every of their appurtenances, as before in the said indenture mentioned to be demised to the aforesaid *J.* his executors, administrators and assigns, from the 2d day of *February* then last past, for and during and until the full end and term of four years, from thenceforth fully to be complete and ended: *Tichting and paying* therefore yearly and every year, during the aforesaid term, unto the said *E.* and *M.* their heirs and assigns, the yearly rent or sum of 56*l.* of lawful *Englisch* money, to be paid at these two usual times of payment in the year, (that is to say) at and upon every 2d day of *February* and every 2d day of *August*, by even and equal parts or portions; the first payment

to commence and take place at and upon the 2d day of *August* next ensuing the date of the said indenture. *And* it was by the said *Covenants*. indenture covenanted and agreed upon by and between the said parties above-mentioned, that they the said *E.* and *M.* their heirs and assigns, should and would before the feast day of *St. Michael* the archangel next ensuing the date of the said indenture, at their own proper costs and charges well and sufficiently repair, amend and put the afore-said premisses, by the said indenture granted, in a good and tenantable repair: *And* he the said *J.* did for himself, his executors, administrators and assigns, covenant, promise and agree, to and with the said *E.* and *M.* their heirs and assigns, that he the said *J.* his executors, administrators and assigns, should and would from time to time, and at all times during the term by the said indenture granted, at his or their own proper costs and charges well and sufficiently repair, amend, maintain, sustain, uphold and keep all and singular the said demised premisses, with their and every of their appurtenances, in so good and tenantable reparation and amendment: *And* that the said *J.* his executors, administrators and assigns, should not at any time during the said term commit, cause, procure or suffer to be committed or done any manner of wilful waste, spoil or destruction, in or upon the said demised premisses, in cutting down any timber-trees, (except what were necessary for the use of the said premisses) as by the said indenture

Defendant entered. indenture more fully appeareth: *By virtue of*

which demise the said *J.* entered into the said demised premises with the appurtenances, and was possessed thereof for and during the said four years to him granted as aforesaid, *to wit*, until and upon the 2d day of *February* in the year of our Lord 1776. *And* altho' the said *E.* and *M.* before the said feast of *St. Michael* the archangel next after the date of the said indenture, at their own proper costs and charges did well and sufficiently repair, amend and put the aforesaid premises by the said indenture granted in tenantable repair: *Nevertheless* the said *J.* from time to time, and at all times during the residue of the said term, did not well and sufficiently repair, amend, maintain, sustain, uphold and keep the said demised premises in so good and tenantable reparation and amendment, according to the form and effect of the said covenant of the said *J.* so made with the said *E.* and *M.* in that respect

First breach.

Second breach. as aforesaid. *And* the said *E.* and *M.* further say, that the said *J.* during the said term, *to wit*, on the 1st day of *February* in the year of our Lord 1776. aforesaid, did wilfully commit waste, spoil and destruction, in and upon the said demised premises, in cutting down timber-trees, *to wit*, 20 oaks, 30 ashes, and 40 elms, growing in and upon the said demised premises, (other than what was necessary for the use of those premises) and taking, carrying away and detaining the timber thereof, contrary to the form and effect of his said covenant so made with the said

said *E.* and *M.* in that respect as aforesaid :
And so the said *J.* (although often requested)
 hath not kept his said covenant so made as
 aforesaid with the said *E.* and *M.* but hath
 broke it, and has hitherto wholly denied,
 and still doth deny to keep the same with
 the said *E.* and *M.* Whereby the said *E.* and
M. say that they are injured, and have da-
 mage to the value of 40 *l.* And thereof they
 bring suit, &c

And the said *J.* by *T. R.* his attorney co-*Plea.*
 meth and defendeth the force and injury
 when, &c. and saith that the said *E.* and
M. ought not to have their said action against
 him; because, *As to the breach of covenant* *As to the first*
 above supposed to be made in this, That *breach.*
 altho' the said *E.* and *M.* before the said feast
 of St. *Michael* the archangel next after the
 date of the said indenture, at their own pro-
 per costs and charges, did well and suffici-
 ently repair, amend and put the aforesaid
 premisses, by the said indenture granted, in
 good and tenantable repair: *Nevertheless* the
 said *J.* from time to time, and at all times
 during the residue of the said term, did not
 well and sufficiently repair, amend, main-
 tain, sustain, uphold and keep the said de-
 milled premisses in so good and tenantable
 reparation and amendment, according to the
 form and effect of the said covenant of the
 said *J.* so made with the said *E.* and *M.* in
 that respect as aforesaid, he the said *J.* saith,
 that the said *E.* and *M.* before the said feast-
 day of St. *Michael* the archangel next after
 the date of the said indenture, did not well

Issue.

As to the second breach.

Issue.
Venire.

and sufficiently repair, amend and put the
aforesaid premisses by the said indenture
granted in good and tenantable repair, as
they the said *E.* and *M.* have by their said
declaration above alledged: And hereupon
he putteth himself upon the country: *And*
the said *E.* and *M.* do so likewise. *And as*
to the breach of covenant above supposed to
be made in this, that the said *J.* did com-
mit wilful waste, spoil and destruction in and
upon the said demised premisses, in cutting
down the said timber-trees, growing in and
upon the said demised premisses, (other than
what were necessary for the use of those pre-
misses) and taking, carrying away, and de-
taining the timber thereof, contrary to the
form and effect of the said covenant so made
with the said *E.* and *M.* in that respect as
aforesaid, the said *J.* saith, that he the said
J. did not commit the said waste, spoil or
destruction, in manner and form as the said
E. and *M.* have by their said declaration
above supposed; and thereupon he putteth
himself upon the country: *And* the said *E.*
and *M.* do so likewise. Therefore the she-
riff is commanded, that he cause to come in
eight days from the purification of the blef-
sed virgin *Mary* twelve, &c. By whom,
&c. And who neither, &c. To recog-
nize, &c. Because as well, &c.

Debt.

Debt.

Westmorland, *J.* S. late of *N.* in the coun- *Declaration in*
to wit, *J.* ty afore said, husbandman, *debt on the*
 was summoned to answer *J. D.* Esq; of a *stat. 2 E. 6.*
 plea, that he render to him 15*l.* which he *c. 13. for not*
 oweth to him, and unjustly detaineth from *setting forth*
 him, &c. And whereupon the said *J.* by *tithes.*
R. S. his attorney saith, that *whereas* the said *Plaintiff far-*
J. for two years last past and more, was and *mer of the*
 yet is farmer and tenant of all the tithes of *tithes.*
 corn and grain in the rectory of *K.* in the said
 county, belonging or appertaining to the
 said rectory, yearly growing, coming or re-
 newing within the said parish of *K.* afore said,
 and the bounds and limits and tithable places
 of the said parish: And *whereas* the said *J.* *Defendant oc-*
S. on the 30th day of *September* in the year *cupier of lands.*
 of our Lord 1772. and from thence hither-
 to was the farmer, occupier and possessor of
 twenty acres of land, with the appurtenan-
 ces, within the rectory and parish afore said,
 and the bounds, limits, and tithable places
 of the same parish, the tithes of corn and
 grain yearly growing, coming or renewing,
 of, in, and from which said twenty acres
 of land, within forty years next before the
 statute made in the parliament of the lord
Edw. VI. late king of *E.* held at *W.* in the
 2d year of his reign, and provided for and
 concerning the payment of tithes, were of
 right yielded, and payable and paid to the
 owner of the rectory afore said, or his farmer

of the said rectory, or of the tithes thereof for the time being, in their proper kinds: *Sows the land And the said J. being so farmer, occupier with corn.* and possessor of the said twenty acres of

Reaps it.

Does not set forth the tithes.

land, with the appurtenances; and the said J. being farmer of the said tithes as aforesaid, the said J. afterwards, *to wit*, the 1st day of *April* in the year of our Lord 1773. sowed the said twenty acres of land with oats, and at the time of corn-harvest then next following, *to wit*, the 20th day of *September* in the year of our Lord 1773. did cut and reap all the oats growing upon the said twenty acres of land, the tithes of which said oats so cut and reaped by him, did belong to the said J. as such farmer of the tithes aforesaid, and of right ought to have been yielded and paid to him: *Nevertheless* the said J. not regarding the statute aforesaid, nor dreading the penalty therein contained, did not divide, sever or set out the tenth part of the oats aforesaid, or any part thereof, for the tithes thereof, nor did agree with the said J. being farmer of the said tithes as aforesaid, for the tithes of the said oats; but afterwards, *to wit*, the 28th day of *September* in the year of our Lord 1773. aforesaid, at the parish of K. aforesaid, did take and carry away all the said oats, coming in and upon the said twenty acres of land, by him cut and reaped as aforesaid, from the place where they grew and ought to have been tithed, without setting forth the tithes thereof, and without any composition or agreement for the tithes thereof, had or made with

with the said *J.* being then farmer of the tithes as aforesaid, against the form of the statute aforesaid. *And* the said *J.* in fact *Value of the* faith, that the same tithes or tenth part of *tithes.* the said oats so as aforesaid taken and carried away, at the time of such taking and carrying away thereof, were reasonably worth 5*l.* Wherefore an action accrued to the said *J.* to demand and have of the said *J.* the aforesaid 15*l.* for the treble value of the said tithes so taken and carried away by the said *J.* against the form of the statute aforesaid: *Nevertheless* the said *J.* (although often requested) hath not rendered the aforesaid 15*l.* or any part thereof, to the said *J.* but hath hitherto altogether refused, and still doth refuse, to render the same to him, to the damage of the said *J.* of 10*l.* And therefore he bringeth suit, &c.

Gloucestershire, to wit, *J. V.* farmer of the *Declaration in* rectory of *M.* in the county aforesaid, com- *debt on the* plaineth of *S. H.* in the custody of the mar- *stat. of 2 & 3* shal, &c. of a plea, that he render to him *E. 6. c. 13.* 6*l.* of lawful money of *England*, which he *for not setting* oweth him, and unjustly detaineth; *For Plaintiff far-* *that*, to wit, that *whereas* the said *J.* on the *mer of the* 25th day of *March* in the 2d year of the *rectory.* reign of our sovereign lord *James II.* now king of *England*, &c. and from that time continually hitherto, hath been and still is farmer of the rectory impropriate of *M.* with the appurtenances, in the county aforesaid, and of all and singular the tithes to the said rectory in any manner belonging and appertaining, yearly coming, growing, renewing,

Defendant occupier of, &c.

The tithes payable for forty years before the statute.

Defendant ploughs the land and reaps the corn, &c.

or happening within the said parish of *M.* in the county aforesaid, and the bounds, limits and tithable places of the said parish. And the said *S.* on the 25th day of *March* in the 2d year aforesaid, and continually afterwards, from that time until the exhibiting of this bill, has been and now is the occupier and possessor of a close of meadow called *Foxwell's Wood*, containing by estimation thirteen acres, and of two acres of arable land in the northfield of *M.* aforesaid, and within the parish of *M.* aforesaid in the county aforesaid, and the bounds, limits and tithable places of the said parish; The tithes of the grain and hay yearly growing, coming, and renewing out of and from which said close of pasture and two acres of land, for forty years next before the making a certain act made in the parliament of *Edward VI.* late king, held at *W.* in the county of *M.* in the 2d year of his reign, made and provided for the true payment of tithes in their proper kinds and species, were of right due and payable to the rector of the said rectory, or to his farmer or deputy of the said rectory for the time being. And the said *S.* so as aforesaid, for the whole time aforesaid being occupier and possessor of the said close of meadow and two acres of land, and the said *J.* being so as aforesaid farmer of the said rectory, the said *S.* afterwards, *to wit*, on the said 25th day of *March* in the 2d year aforesaid, ploughed and sowed the said two acres of land with wheat; and afterwards, *to wit*, on the 6th day of *September* in the said

said 2d year of the reign of our said lord the present king, mowed and made into hay all the grasse then growing in and upon the said close of pasture, and cut down all the wheat then growing in and upon the said two acres of land; the tithes of which said hay and wheat as aforesaid growing and coming out of and from the said close of meadow and the said two acres of land, of right belonging to the said J. as farmer of the said rectory, and ought of right to have been rendered and paid to him. Yet the said S. being a subject of our said lord the present king of this kingdom of *England*, no ways regarding the said statute, nor any ways fearing the penalties contained in the same, did not divide, separate, render and pay the tenth part of the said wheat and hay, or any parcel thereof, for the tithes of the same, nor any ways compounded or agreed with the said J. being so as aforesaid farmer of the said rectory, for the tithes of the same, or of any parcel thereof; but the said S. afterwards, *to wit*, on the 10th day of *October* in the 2d year aforesaid, then and there took and carried away all the grain and hay so as aforesaid growing and coming, and mowed in that year upon the said close of meadow and two acres of land, from the said places where the said hay and wheat grew, without any putting out of the tenth part of the same, and without any composition or agreement had or made with the said J. for the tithes of the same, which tithes were then worth

Does not set forth the tithes.

Per quod ac- 40 s. of lawful money of *England*; *Whereby*
tio accrevit. an action accrued to the said *J.* to demand
and have of the said *S.* the 6 *l.* aforesaid, be-
ing treble the value of the tithes of the said
wheat and hay taken and carried away by
the said *S.* as aforesaid, contrary to the form
of the said statute: *Yet* the said *S.* although
often requested, &c. hath not yet paid the
said 6 *l.* to the said *J.* But, &c.

Declaration in *Sussex*, to wit, *S. A. Gent.* who sueth in
debt Qui tam, this behalf as well for our lord the king as
&c. on the for himself, complaineth of *T. F. the elder*,
stat. 29 Car. in the custody of the marshal of the *Mar-*
2. c. 7. for not *shalsea* of our lord the king, before the king
going to church. himself, of a plea, that he render to our said
1 Bro. 91. lord the king, and to the said *S. A.* who as
1 Salk. 30. well, &c. 200 *l.* of lawful money of *Eng-*
373. *land*, which he oweth them, and unjustly
detaineth; for that, *that* the said *T. F.* on
the 20th day of *May* in the 34th year of the
reign of our sovereign lord *Charles II.* now
king of *England*, &c. being above the age
of sixteen years, and then and from thence
continually afterwards, for the space of ten
months thence next ensuing, an inhabitant,
and dwelling within this kingdom of *Eng-*
land, to wit, at the parish of *All-Saints* in
Lewes in the county aforesaid, did not re-
pair, nor endeavour to repair to his parish-
church of *All Saints* in *Lewes* aforesaid, nor
to any other church, chapel, or usual place
of common prayer and preaching, or other
divine service there used and administred ac-
cording to the form of the statute in such
case made and provided, but for the whole
time

time aforesaid voluntarily and obstinately, without any lawful or reasonable cause or excuse, did forbear from the same, contrary to the form of the statute in such case made and provided: *Whereby* an action accrued, *Actio accre-* as well to our said lord the king, as to the *vit.* said S. who as well, &c. to demand and have of the said T. the said 200*l.* *to wit,* 20*l.* for every month of the said ten months in which the said T. contrary to the form of the said statute absented himself as aforesaid from church, chapel, or place of common prayer and preaching, or other divine service there: *Yet* the said T. altho' often requested, &c. did not pay the said 200*l.* to our said lord the king and the said S. who as well, &c. but hath hitherto intirely refused, and still doth refuse to pay them the same, to the damage of the said S. of 40*l.* And thereof as well for our said lord the king as for himself he bringeth suit, &c.

and the said T. P. by — — his attorney *plea,* Nil cometh and defendeth the force and injury debt. when, &c. and saith, that he doth not owe to our said lord the king and the said S. who as well, &c. the said 200*l.* nor any part thereof, in manner and form as the said S. who as well, &c. above complaineth against him; And of this he putterh himself upon the country: *And* the said S. who as well, *Issue.* &c. doth so likewise. *Therefore* let a jury *Venire a-* thereupon come before our lord the king at *twarded.* W. on *Wednesday* next after three weeks of the *Holy Trinity*; And who neither, &c. To recognize,

recognize, &c. Because as well, &c. The same day is given to the parties aforesaid at the same place, &c.

Declaration in debt against a gaoler, on the Habeas corpus act, 31. Car. 2. c. 2. for denying a copy of a commitment.

Surrey, to wit, *J. F.* gent. complaineth of *W. L.* esq; marshal of the *Marshalsea* of the court of our lord and lady the present king and queen, before the said king and queen present here in court, in his proper person, of a plea, that he render to him 100*l.* of lawful money of *England*, which he oweth him, and unjustly detaineth; for that, *to wit*, *That whereas* after the first day of *July* in the year of our Lord 1679, he the said *J. F.* in vacation-time and out of term, *to wit*, on the 20th day of *March* in the 2d year of the reign of our lord *William* and lady *Mary*, now king and queen of *England*, &c. at the parish of *St. George* in *Southwark* in the county of *Surrey*, was taken and detained in prison by the said *W. L.* without any warrant or commitment for treason or felony expressed in the same: And also whereas afterwards, *to wit*, on the 29th day of *March* in the said 2d year of the reign of our said lord the king and lady the queen, at the parish aforesaid in the county of *Surrey* aforesaid, the said *J. F.* demanded of the said *W. L.* a true copy of the warrant of commitment and detainer of the said *J. F.* in the said prison by him the said *W. L.* Yet the said *W. L.* altho' often requested, within the said space of six hours next after the said demand, did not deliver a copy of the warrant of commitment and detainer of the said

saïd J. F. in the custody of the saïd W. L. but he intirely neglected and omitted to deliver the same to him, contrary to the form of the statute in such case lately made and provided; whereby and by force of the saïd statute the saïd W. L. has forfeited the sum of 100*l.* Whereby and by force of the saïd statute an action accrued to the saïd J. F. being the party aggrieved, to demand and have of the saïd W. L. the saïd 100*l.* Yet the saïd W. altho' often requested, &c. hath not yet paid the saïd 100*l.* or any part thereof, to the saïd J. but hath hitherto intirely refused, and still doth refuse to pay him the same, to the damage of the saïd J. of 10*l.* And thereof he bringeth suit, &c.

Elsewhere, as it appears of the term of *Easter*, in the seventeenth year of the reign of king *George* the third, on the

roll, it is thus contained:

Somersetshire, to wit, T. S. late of the bo-
rough of L. in the county aforesaid, gen-
tleman, was summoned to answer, E. P.
esq; of a plea, that he render to him 500*l.*
which he oweth him, and unjustly de-
taineth; for that, to wit, that *whereas*
the town of I. in the county aforesaid
is an antient borough, and that two bur-
gesses of the same borough to come to
every parliament of our lord the king and
his predecessors, kings and queens of Eng-
land, from the time to the contrary whereof
the memory of man is not, have been cho-
sen and used to be chosen by the burges-
ses and

*Declaration of
a precedent
term, in debt
on statute
7 & 8 W. 3.
c. 25. §. 6.
against a re-
turning officer,
for refusing a
copy of a poll.*

*Custom to chuse
members.*

Writ of election,

and inhabitants of the said borough, having votes in that election: *And whereas* a certain writ of our lord the present king, issued out of his chancery at *W.* in the county of *M.* on the 7th day of *January* in the 16th year of his reign, bearing date the same day and year, directed to the sheriff of the said county of *S.* by which said writ our said lord the king reciting, that whereas our said lord the king, by the advice and consent of his council, for certain arduous and urgent affairs concerning our said lord the king, the state and defence of his kingdom of *Great Britain* and the church, had ordered a certain parliament to be held at his city of *W.* on the 17th day of *March* then next ensuing, and there to have conference and treat with the prelates, great men and peers of his said kingdom, did command and strictly injoin the then sheriff of the county of *S.* that proclamation being made in his next county-court to be holden after the receipt of the said writ, at the time and place aforesaid, two knights girt with swords, of the most fit and discreet of the said county, and of every city of the said county two citizens, and of every borough two burgeses of the most discreet and sufficient, freely and indifferently by them who at such proclamation should be present, the said sheriff should cause to be elected, according to the form of the statute in that case made and provided, and the names of such knights, citizens and burgeses so elected, in certain indentures there:

thereupon to be made between the said sheriff and them who shall be present at such election to be inserted, whether the person so elected should be present or absent, and them at the said day and place should cause to come; so that the said knights full and sufficient power for themselves and the commonalty of the said county, and the said citizens and burgeses for themselves and the commonalty of the said cities and boroughs, severally from them might have, to do and consent to those things which then and there by the common council of his said majesty's kingdom (with God's assistance) should happen to be ordained upon the affairs aforesaid; so that through defect of such power, or by an improvident election of such knights, citizens and burgeses, the said affairs might not in any wise remain unprovided for; Willing nevertheless, that neither the said sheriff, nor any other sheriff of his said majesty's kingdom aforesaid should in any wise be elected; and the said election in full county of the same sheriff so made, distinctly and openly under the seal of the said sheriff, and the seals of them who should be present at such election, at such election the sheriff should certify to our said lord the king, in his Chancery, at the day and place aforesaid, without delay, remitting to our said lord the king one part of the aforesaid indentures sewed to the said indentures together with the said writ, as by the said writ now remaining in the court of Chance-

*Precept to a
defendant, as
bailiff of the
borough.*

The election

ry of our said lord the king at *W.* aforesaid more fully appears: *Which* said writ afterwards, *to wit*, on the 26th day of *January* in the said 16th year of the reign of our said lord the present king, at *I.* aforesaid in the said county of *S.* was delivered to one *J. T.* esq; then sheriff of the said county of *S.* to be executed in form aforesaid. *By virtue* of which said writ the said sheriff afterwards, *to wit*, on the said 26th day of *January* in the 16th year aforesaid, there made his certain precept in writing, sealed with the seal of his said office of sheriff, directed to the bailiff of the said borough of *I.* in the county aforesaid, of and for the electing within that borough two burgessees of the same borough, according to the form and effect of the said writ: *Which* said precept afterwards, *to wit*, on the said 26th day of *January* in the 16th year aforesaid, at *I.* aforesaid, was delivered to the said *T. S.* then bailiff of the said borough of *I.* (to which said bailiff the execution of the said precept belonged) to be executed in form of law. *By pretext* of which said precept afterwards, *to wit*, on the 2d day of *February* in the said 16th year of the reign of our lord the present king, at *I.* aforesaid, the election of two burgessees for the same borough of *I.* aforesaid, to come to the said parliament, according to the form and effect of the said writ, came on. *And* thereupon the said *E. P.* and one Sir *J. B.* knt. *W. B.* esq; and *J. H.* esq; were and stood candidates at the said election, that of them

them two might be chosen to be burgesses of parliament for the same borough; and many burgesses of the said borough were present at the said election, and having votes in that behalf, then and there gave their votes for the said *E. P.* to be one of the said two burgesses of parliament for the said borough; and divers burgesses of the said borough also present at the said election, then and there gave their votes for the said Sir *J. B.* to be another of the said two burgesses of parliament for the said borough; and divers other burgesses of the said borough also present at the said election, then and there gave their votes for the said *W. B.* and *J. H.* to be the two burgesses of parliament for the said borough. So that for the making the *Poll taken*, said election plain, a poll of the voters at the said election being required and demanded by some of them, was then and there had, and taken in writing before the said *T. S.* then bailiff of the said borough as aforesaid; and he the said *T. S.* then and there took and had the said poll. And after the *Copy demanded* poll of voters of, in and for the said election, *ed.* taken, had and ended, *to wit*, on the 10th day of *February* in the 16th year aforesaid, at *I* aforesaid, the said *E. P.* requested the said *T. S.* then bailiff of the said borough as aforesaid, to deliver to the said *E. P.* a copy of the poll of voters found at the said election, and then and there was ready and offered to pay to the said *T. S.* any reasonable sum of money for writing thereof, which

Refus.d.

which he should demand for the same: *Yet* the said *T. S.* bailiff of the said borough as aforesaid, (to which said bailiff the execution of the said precept for electing the said burgessees then belonged) no ways regarding the duty of his office of bailiff of the said borough in this behalf, and the statute in such case made and provided, nor any ways fearing the penalty contained in the said statute, did not then or afterwards deliver to the said *E. P.* a copy of the poll of voters at the said election for the said borough, but voluntarily then and afterwards intirely refused to deliver the same to him, contrary to the said statute made and provided:

Actio accrevit.

Whereby an action accrued to the said *E. P.* to demand and have of the said *T. S.* the said 500*l.* *Yet* the said *T. S.* although often requested, hath not yet paid the said 500*l.* to the said *E. P.* but hath hitherto intirely refused, and still doth refuse to pay him the same: Wherefore he saith that he is injured, and hath damage to the value of 40*l.* And thereof he bringeth suit, &c.

Impar lance.

And now at this day, *to wit*, on the morrow of the *Holy Trinity*, in the 2d year of the reign of our said lord the present king, in this same term, until which day the said *T.* had leave to imparle, and then to answer, &c. cometh as well the said *E.* by his attorney aforesaid, as the said *T.* by *J. L.* his attorney. *And* the said *T.* defendeth the force and injury when, &c. and

Non debet.

and faith that he doth not owe to the said *E.* the said 500*l.* or any part thereof, in manner and form as he the said *E.* hath above declared against him; And of this he putteth himself upon the country: *And the Issue.* said *E.* doth so likewise, *Et.* Therefore *Venire.* let a jury come thereupon before our lord the king at *W.* in three weeks of the *Holy Trinity*; And who neither, *Et.* To take cognizance, *Et.* Because as well, *Et.* The same day is given to the parties aforesaid at the same place, *Et.* At which day the said parties came by their attornies aforesaid before our lord the king at *W.* and the sheriff did not return the said writ: *Therefore* let a jury thereupon, as before, come before our lord the king at *W.* in fifteen days of *St. Martin*; And who neither, *Et.* To take cognizance, *Et.* Because as well, *Et.* The same day is given to the parties aforesaid at the same place, *Et.* At which day the said parties came by their attornies aforesaid before our lord the king at *W.* and the sheriff did not return the said writ. *Therefore* let a jury thereupon, as before, come before our lord the king at *W.* on the octave of the purification of the blessed Virgin *Mary*; And who neither, *Et.* To take cognizance, *Et.* Because as well, *Et.* The same day is given to the parties aforesaid at the same place. *Afterwards* the process being continued between the parties aforesaid of the plea aforesaid, by the jury being respited between them, before our lord the king at *W.* until

Vic. non misit breve.

Alias venire.

Vic. non misit breve.

Alias venire.

*Process contin-
ued.
Nisi prius.*

fifteen days of *Easter* thence next ensuing, unless the justices of our lord the king assigned to take the assizes in the county aforesaid, shall first come on *Monday* the 18th day of *March* at the castle of *T.* in the county aforesaid, by form of the statute, &c. for default of the jurors, &c. At which said fifteen days of *Easter*, before our lord the king at *W.* the said *E.* came by his attorney aforesaid; and the said justices of our lord the king assigned to take the assizes, &c. before whom, &c. sent here their record before them had in these words; *Afterwards*, on the day and at the place within contained, before *R. P.* esq; one of the barons of the Exchequer of our lord the king, and Sir *R. E.* knt. one of the justices of our lord the king assigned to hold pleas before the king himself, justices of our lord the king assigned to take the assizes in the county of *S.* by form of the statute, &c. come as well the within named *E. P.* esq; as the within written *T. S.* bailiff of the borough of *I.* within written, in the county aforesaid, by their attornies within contained, and the jurors of the jury, whereof mention is within made, being demanded, some of them, *to wit*, *R. C.* and *R. C.* come and are sworn upon that jury; and because the residue of the jurors of the same jury do not appear, *Therefore* others of those standing about, hereunto chosen by the sheriff of the county aforesaid, at the request of the said *E. P.* and by the command of the said justices, are added anew,
whose

Postea.

Tales.

whose names are affiled in the within written panel, according to the form of the statute in such case made and provided; and the jurors so added anew, *to wit*, J. S. W. E. J. S. J. C. L. D. H. P. N. H. R. L. J. D. and H. T. being also demanded, come, who together with the said other jurors first hereunto impanelled and sworn, being chosen, tried and sworn to speak the truth of the within contained, say upon their oath, *that Verdict for the* the said T. S. oweth to the said E. P. the *plaintiff*. within mentioned 500*l.* and every part thereof, in manner and form as the said E. P. hath within declared against him: And they assess the damages of the said E. P. by occasion of the detaining the within written debt, besides his costs charges by him about his suit in this behalf expended, to 2*d.* and for those costs and charges to 40*s.* *Therefore Judgment.* it is considered, that the said E. P. recover against the said T. S. his said debt, and the damages aforesaid assessed by the said jury in form aforesaid; and also 18*l.* for the increase of his said costs and charges, adjudged by the court of our said lord the king now here, to the said E. P. by his assent: Which said damages amount in the whole to 20*l.* and 2*d.* And the said T. S. in mercy, &c.

Elsewhere, as it appears of the term of St. Michael in the 16th year of the reign of king Geo. III. in the 631 Roll, it is thus contained: *Kent*, to wit, E. B. late of H. in the said county, gent. and P. B. late of the same place, gent. have been summoned to
a precedent
to m. in debt
on the statute
9 Ann. c. 25.
for taking

*partridges in
the night.*

answer to J. earl of W. who sueth as well for himself as for the poor of the parish of N. in the said county, in a plea, ~~that~~ they render to them 40*l.* which they owe to them, and unjustly detain, &c. And whereupon the said J. earl of W. who sueth as well for himself as the poor of the said parish in this respect, by F. M. his attorney, saith, that the said E. and P. after the first day of May in the year of our Lord 1711, *to wit*, on the 16th day of August in the year of our Lord 1742, in the night-time of that day, at the parish aforesaid, did take certain partridges, *to wit*, eight partridges, contrary to the statute in such case lately made and provided; by reason whereof, by force of the statute in such case lately made and provided, an action has accrued to the said J. earl of W. who sueth as well, &c. to demand and have of the said E. and P. the said 40*l.* *to wit*, 5*l.* for each of the said eight partridges so taken by them as aforesaid, for himself and the poor of the said parish: *Nevertheless* the said E. and P. altho' often requested, have not rendered to the said J. earl of W. and the poor of the said parish, the said 40*l.* or any part thereof, but have wholly refused, and still refuse to render the same to them; Whereby the said J. earl of W. who as well, &c. saith that he is injured, and hath damage to the value of 10*l.* And thereof as well for himself as the poor of the said parish, he bringeth suit, &c.

And

And the said *E.* and *P.* by *S. E.* their attorney come and pray leave to imparle until the octave of *St. Hilary*; and they have it, &c. The same day is given to the said *J.* earl of *W.* here, &c. And now here at this day, to wit, on the octave of *St. Hilary* in the same term of *St. Hilary*, cometh as well the said earl, who as well, &c. as the said *E.* and *P.* by their attorney aforesaid. And the said *E.* and *P.* defend the force and injury when, &c. and say that they do not owe the said 40*l.* as in and by the said declaration is above supposed; and hereupon they put themselves upon the country: And the said earl doth so likewise. Therefore the sheriff is commanded, &c.

Kent, to wit, *E. L.* late of, &c. was summoned to answer to the poor of the parish of *E.* in the county aforesaid, and to Sir *J. S.* bart. who sueth in this particular as well for himself as for the said poor of the said parish of *E.* aforesaid, of a plea, that he render to the said poor and the said *J. S.* who sueth as aforesaid, 10*l.* of lawful money of *Great Britain*, which he oweth to, and unjustly detaineth from, &c. And whereupon the said Sir *J.* who sues as aforesaid, by *H. C.* his attorney saith, That the said *E.* on the 30th day of *March* 1736, at and in the parish of *E.* aforesaid, did keep a certain greyhound for the destruction of the game of this kingdom, he the said *E.* then not being a person qualified by the laws of this realm to keep a greyhound for the destruction of the game, against the form of the statute in such

Impar lance.

Plea, Nil de-
bent.

Issue.

Declaration in
debt on the
statute, for
keeping a grey-
hound and kill-
ing a hare,
not being a
person qua-
lified.Bluet v. Needs.
Com. Rep.

522.

case made and provided: *Whereby* and by force of the statute in such case lately made and provided, an action hath accrued to the poor of the parish aforesaid, and to the said Sir J. who sues as aforesaid, to demand and have of the said E. for his said offence 5*l.*

Second count. parcel of the said 10*l.* And the said Sir J. who sueth as aforesaid, further saith, *That* the said E. on the said 30th day of *March* in the year aforesaid, in the said parish of *H.* in the county aforesaid, did with a certain greyhound kill one hare, he the said E. then not being a person qualified to kill game, against the form of the statute in such case lately made and provided: *Whereby*, and by force of the statute in such case lately made and provided, an action hath accrued to the poor of the parish aforesaid, and to the said Sir J. who sueth as aforesaid, to demand and have of the said E. for his said last mentioned offence, 5*l.* residue of the said 10*l.* Yet the said E. (altho' often requested) hath not yet paid the said 10*l.* or any part thereof, to the said poor and the said Sir J. who sueth as aforesaid, or either of them; but he to pay the same to the said poor and the said Sir J. who sueth as aforesaid, hitherto wholly hath, and still doth refuse, to the said Sir J. who sueth as aforesaid, his damage of 10*l.* And thereof as well for the said poor as for himself he bringeth suit, &c.

Plea, Nil debet.

And the said E. L. by R. P. his attorney cometh and defendeth the wrong and injury when, &c. and saith, that he doth not owe
to

to the said Sir J. who sueth as well, &c. the said sum of 10 l. or any part thereof, in manner and form as the said Sir J. who sueth as well, &c. above thereof complaineth against him; and of this he putteth himself upon the country: And the said Sir J. who sueth as aforesaid, doth likewise the same. *Issue.*
Therefore, &c.

And the said Sir J. S. although solemnly called, came not, nor hath entered his said *Judgment for not entering the issue.* *Issue.* writ: Therefore he and his pledges of prosecution are thereupon amerced, &c. And the names of the pledges of the said Sir J. are, &c. And that the said E. depart without day, &c. It is also considered, that the said E. do recover against the aforesaid Sir J. his damages by reason of the premisses, to 3 l. 16 s. 8 d. to the said E. by the discretion of the justices here adjudged at his request for his costs and charges in this behalf sustained, according to the form of the statute in such case made and provided.

Middlesex, to wit, J. L. late of, &c. was summoned to answer W. R. who sueth as well for our lord the king as for himself in this behalf, in a plea, that he render to our said lord the king and the aforesaid W. the sum of 10 l. 11 s. of lawful money of Great Britain, which to them he oweth and unjustly detaineth, &c. And whereupon the said W. who sueth as well for our said lord the king as for himself, by J. B. his attorney complaineth, That the said J. L. after the 29th day of September in the year of our

Declaration in debt on the Statute of assumpsit.
J. C. B.

Lord 1714, *to wit*, on the 22d day of *June* in the year of our Lord 1736, at the parish of *St. Martin in the Fields* in the county aforesaid, upon a certain contract made after the said 29th day of *September*, *to wit*, on the 22d day of *June* in the year of our Lord 1733, at the parish aforesaid in the county aforesaid, between the said *J.* and one *M.* *M.* took, accepted and received of and from the said *M.* the sum of 4*l.* 14*s.* 6*d.* by way of corrupt bargain for giving day of payment to her the said *M.* from the said 22d day of *June* in the year of our Lord 1733, to the 22d day of *June* in the year of our Lord 1736, of the sum of 10*l.* 10*s.* lent on the 22d day of *June* in the year of our Lord 1733, at the parish aforesaid in the county aforesaid, by the said *J.* to the said *M.* Which said sum of 4*l.* 14*s.* 6*d.* so took, accepted and received by the said *J.* of the said *M.* as aforesaid, is above the rate of 5*l.* for the forbearing of 100*l.* for one year, and is against the form of the statute in such case made and provided: *Whereby* an action hath accrued to the said *W.* who sueth as well for our lord the king as himself, to demand and have of and from the said *J.* the sum of 31*l.* 10*s.* part of the said 101*l.* 11*s.* being the treble value of the said sum of 10*l.* 10*s.* of the said *J.* by him lent to the said *M.* as aforesaid; [*other like counts for the remainder of the 101*l.* 11*s.**]

*Declaration in
debt on a
jur. mort.*

London, *to wit*, *R. D.* late of *L.* carpenter, was summoned to answer *L. P.* of a plea, that he render to him 62*l.* of lawful money

money of *Great Britain*, which he oweth to and unjustly detaineth from him, &c. And ~~whereupon~~ the said *L.* by *J. C.* his attorney saith, that ~~whereas~~ the said *L.* heretofore, that is to say, in *Easter* term in the 4th year of the reign of his present majesty king *George* the second, in his majesty's court before *Sir R. E. knt.* and his brethren, then his majesty's justices of the common bench here at *W.* in the county of *M.* by the consideration of the said court recovered against the said *R.* 62*l.* which were adjudged to the said *L.* in the said court, for his damages which he had sustained, as well by occasion of the not performing certain promises and undertakings to the said *L.* by the said *R.* then lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* is convicted, as by the record and proceedings thereof, now remaining in his majesty's said court here, may more fully and at large appear: *Which* said judgment still remaineth in its full strength, force and effect, not reversed, vacated, annulled, discharged or satisfied. And the said *L.* hath as yet obtained no satisfaction of the aforesaid judgment: *Whereby* an action hath accrued to the said *L.* to demand and have of the said *R.* the said 62*l.* Yet the said *R.* (although often requested) hath not yet rendered the said 62*l.* or any part thereof, to the said *L.* but to render the same to him hitherto hath, and still doth wholly deny, to the damage of the said *L.* of 20*l.* And thereof he bringeth suit, &c.

And

*Plea, Nul tiel
record.*

And the said *R.* by *W. W.* his attorney cometh and defendeth the force and injury when, &c. and saith that the said *L.* ought not to have his said action against him, because he saith, that there is not any such record of recovery of damages aforesaid against him the said *R.* in his said majesty's court before Sir *R. E.* knt. and his brethren, his majesty's justices of the common bench, at the said *L.* in his declaration hath alledged; and this he is ready to verify: Therefore he prayeth judgment, if the said *L.* ought to have his said action thereof against him, &c.

*Replication,
habetur tale
recordum.*

And the said *L.* saith, that by any thing before alledged he ought not to be barred from having his aforesaid action maintained against the said *R.* because he saith that there is such a record of recovery against him the said *R.* in his said majesty's court of common bench here remaining, as by the said declaration is above alledged; and this he is ready to verify by the said record: And he prayeth that the said record may be inspected and seen by the judges here, &c.

*Day given to
bring in the
record.*

And because the said *L.* hath not the said record now ready here in court, it is said by the said court here to the said *L.* that he have the record here on——: The same day is given to the said *R.* here, &c.

Note; Upon bringing the record into court on the day given, the secondary draws up a rule of court for judgment *Nisi causa* within four days, and at the expiration of that time the secondary certifies at the foot of

of the rule that no cause hath been shewn;
after which judgment may be signed.

Surrey, to wit, *J. M.* late, &c. was summoned to answer *H. G.* of a plea, that he render to him 99*s.* and 8*d.* which he oweth to and unjustly detaineth from him, &c. *Declaration in debt on a judgment in the palace-court.*

And thereupon the said *H.* by *T. C.* his attorney saith, *That whereas* the said *H.* (that is to say) at the court of the king's palace at *W.* held before the judges of the said court there (*to wit*) at *S.* in the county of *S.* aforesaid, within the jurisdiction of the said court, on *Friday* the 23d day of *January* in the 9th year of the reign of the present king, by consideration of the said court recovered against the said *J. M.* (by the name of *J. M.*) 99*s.* and 8*d.* which were assessed to the said *H.* in the aforesaid court of the king's palace at *W.* held before the judges of the said court here, for his damages which he had sustained, occasioned by the non-performance of several promises and undertakings of the said *J. M.* made to the said *H.* by him the said *J.* besides his costs and charges about his said suit in that behalf expended, by the said court there for increase adjudged, whereof the said *J.* is convicted; as by the record and proceedings in the same court of the king's palace at *W.* held before the judges of the said court there, *to wit*, at *S.* aforesaid, in the county of *S.* aforesaid, within the jurisdiction of the said court there remaining, may appear: Which said judgment still remaineth in the said court there in full force, not in the least satisfied, reversed

versed or discharged. And the said *H. G.* hath not as yet sued out any execution upon that judgment: By which an action hath accrued to the said *H.* to require and have of the aforesaid *J. M.* the aforesaid 99 s. and 8 d. *Nevertheless, &c.*

Plea, Nul tiel Record.

Replication, Habetur tale recordum.

Certiorari to
the palace-
court prayed
and awarded.

And hereupon the said *H.* prayeth the king's writ to be directed to the judges by the court of the king's palace at *Westminster*, and to every of them, to certify to the justices of the said lord the king here, Whether there be such record of such recovery of 99 s. 8 d. against the said *J.* by the said *H. G.* or not. And it is granted to him returnable here.—At which day here come as well the said *H.* as the said *J.* by their attornies aforesaid, and the said judges of the said court, namely, *William* duke of *Devonshire*, steward of the king's household, Sir *P. M.* Knight Marshal of the said household, and Sir *T. A.* Knight, steward of the palace court aforesaid, sent to the justices here the record aforesaid, whereof there is mention above made, between the parties aforesaid, and remaining before them, which said writ and record remain filed amongst the records here without day, &c. Whereupon the said *H.* prayeth judgment and his debt aforesaid, together with his damages, by reason of detaining of the said debt to be adjudged to him, &c.

Return,

Declaration in
dilection a judge-
ment of Non
prol.

Middlesex, to wit, *A. B.* late, &c. was summoned to answer *D. L.* in a plea, that he render

render to him 3*l.* 3*s.* which he oweth to and unjustly detaineth from him, &c. And *whereupon* the said *D. E.* by *W. R.* his attorney saith, *That whereas* he the said *D. E.* heretofore, *to wit*, in the term of the *Holy Trinity* in the 10th and 11th years of the reign of his present majesty king *George* the second, in his said majesty's court of *Common Bench* at *Westminster* before Sir *John Mordaunt*, Knt. and his brethren, then his said majesty's justices of the said court here, *to wit*, at *Westminster* in the county aforesaid, by judgment of the same court recovered against the said *A. B.* 33*l.* 4*s.* which were adjudged to the said *D. E.* in the same court according to the form of the statute in such case made and provided for his costs and charges which he had sustained, for that the said *A. B.* did not prosecute his said majesty's writ in a certain plea of [*as the case is*] lately brought by the said *A. B.* against the said *D. E.* in the said court, whereof the said *A. B.* is convicted as by the record and proceedings thereof now remaining in his said majesty's court of *C. B.* at *Westminster* aforesaid doth plainly appear; which said judgment still remaineth in force and power, not reversed, annulled or satisfied. And the said *D. E.* hath not yet obtained execution of the said judgment. *Whereby* an action hath accrued to the said *D. E.* to demand and have of the said *A. B.* the said 33*s.* 4*d.* parcel of the said 3*l.* 3*s.* And also *whereas* the said *A. B.* on the 22d day of *July* in the year of our Lord 1737. at *W.* aforesaid, had borrowed

Debt on a mutuatus.

rowed of the said *D. E.* 29*s.* 8*d.* remainder of the said 3*l.* 3*s.* to be paid to the said *D. E.* when he the said *A. B.* should be afterwards thereunto requested. Yet the said *A. B.* although often requested, hath not rendered to the said *D. E.* the said 3*l.* 3*s.* or any part thereof, but hath hitherto refused and still doth refuse to render the same to the said *D. E.* whereby he saith, that he is injured and damnified to the value of 5*l.* And thereof bringeth suit, &c.

Declaration in debt by an executor, on a judgment obtained by the testator.

Middlesex, A. B. late of, &c. was summoned to answer *C. D.* executor of the testament and last will of *E. F.* deceased, of a plea, that he render to him 100*l.* of good and lawful money of *Great Britain*, which he unjustly detaineth from, &c. And thereupon the said *C.* by *W. R.* his attorney saith, That whereas the said *B.* in his life-time, to wit, in the term of *St. Michael* in the 6th year of the reign of the lord the now king, here at *W.* in the said county, before *Sir R. E. knt.* and his brethren, then justices of our said lord the king of the bench, the said *E.* by the judgment of the said court did recover against the said *A.* a certain debt of 97*l.* and 60*s.* for his damages which he sustained on account of the detaining of the said debt, whereof he is convicted, as by the record thereof in the said court now remaining plainly appeareth. And the said *C.* averreth, that the said 100*l.* hath not been paid to the said *E.* in his life-time, or to the said *C.* since his death, or to either of them; and that no execution of the debt and

and damages aforesaid, or any part thereof, hath yet been had or obtained: By reason whereof an action accrued to the said *E.* in his life-time, and to the said *C.* since his death, to demand and have of the said *A.* the said 100*l.* Yet the said *A.* altho' often requested, hath not paid the said 100*l.* to the said *E.* in his life-time, or to the said *C.* since the death of the said *E.* or to either of them; but to pay the same to them hath hitherto refused, and to pay the same to the said *C.* still doth refuse: Whereupon he is prejudiced, and hath damage to the value of 20*l.* And thereof he bringeth suit, &c. With this, that the said *C.* will verify that the judgment aforesaid, still remaineth in its full strength and power, in no ways reversed, annulled or satisfied. And the said *C.* bringeth here into court the letters testamentary of the said *E.* whereby it plainly appeareth to the court here, that the said *C.* is executor of that testament, and hath the administration thereof granted to him, &c.

Profert of the letters testamentary.

Middlesex, to wit, *R. M.* late of *B.* in the county of *Bucks*, esq; was summoned to answer *J. F.* clerk, in a plea, that he render to him 302*l.* 13*s.* which he oweth to him and unjustly detaineth, &c. And whereupon the said *J.* by *R. H.* his attorney saith, that whereas the said *J.* heretofore, that is to say, in the term of *Easter* in the 11th year of the reign of the lady *Anne* late queen of *Grea: Britain*, &c. in the court of the said lady the late queen, before the queen herself at *W.* by bill without the writ of the

Declaration in debt on a judgment obtained in the King's Bench.

said

said late queen, and by the judgment of the same court, recovered against the said *R. M.* by the name of, &c. 300*l.* of debt, and also 35*s.* for his damages which he sustained, as well by occasion of the detaining that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* is convicted; as by the record and process thereupon, remaining in the court of our lord the present king, before the king himself at *W.* more fully appeareth: Which said judgment still remaineth in its full force and effect, no ways reverted, annulled, or in any manner satisfied; and the said *J.* hath not yet sued out execution of the said judgment against the said *R.* Whereby an action hath accrued to the said *J.* to demand and have of the said *R.* the said 300*l.* 13*s.* *Nevertheless* the said *R.* altho' often requested, &c. hath not yet rendered the said 302*l.* 13*s.* to the said *J.* but to render the same to him hath hitherto wholly refused, and still doth refuse: Whereupon the said *J.* saith that he is injured, and hath damage to the value of 20*l.* And thereof he bringeth suit, &c.

*Debetur in
debt a a mu-
tatu
Mch 10 W. 3.
Roll 7, 4*

Cambridge, to wit, *T. A.* late of *H.* in the county aforesaid, the younger, gent. was summoned to answer *T. A.* the elder, esq; in a plea, that he render to him 2000*l.* which he oweth him and unjustly detaineth, &c. And whereupon the said *T. A.* the elder, by *R D* his attorney saith, *That whereas* the said *T. A.* the younger, on the 10th day of *June* in the 10th year of the reign of
our

bur lord the present king, at the town of C. in the county of C. borrowed of the said T. A. the elder the said 2000*l.* to be paid to the said T. A. the elder when he should be thereunto requested: *Nevertheless* the said T. A. the younger, altho' often requested, hath not yet rendered the said 2000*l.* to the said T. A. the elder, but the same hitherto to render to him hath refused, and still doth refuse: Whereupon he saith that he is injured, and hath damage to the value of 20*l.* And thereof he bringeth suit, &c.

And the said T. A. the younger, by J. R. *Judgment by* his attorney cometh and defendeth the force *Non sum in-* and injury when, &c. And the same attorney saith, that he is not informed by the said T. A. the younger of any answer to be given for the said T. A. the younger to the said T. A. the elder in the said plaint; and he saith nothing else thereupon: Whereby the said T. A. the elder remaineth against the said T. A. the younger thereupon undetended. *Therefore* it is considered that the said T. A. *Signed 23 Dec.* the elder recover against the said T. A. the younger his said debt, and his damages by *anno reg. W.* occasion of the detaining of that debt to 40*s.* *3. decimo.* to the said T. A. the elder, by his assent by the court here adjudged. And the said T. A. *Mery.* the younger in mercy &c. *afterwards*, that is to say, on the 30th day of May in the *Satisfaction* 1st year of the reign of our sovereign lord *acknowledged* George now king of Great Britain, &c. came *by baron and* here into court N. W. and M. his wife, *ex- f'm, executrix* cutrix of the testament of the said T. A. the *1st plaintiff.*

elder, esq; by *B. B.* their attorney, and bring here into court the letters testamentary of the said *T.* by which it sufficiently appeareth to the court here, that the said *M.* is the executrix of the said testament, and hath the administration thereof, &c. And the said *N.* and *M.* by their said attorney, by special warrant to him in this behalf made, acknowledged, that they are satisfied for the said debt and damages; therefore he the said *T.* *A.* the younger is quit of the said debt and damages, &c.

Declaration in debt against baron and feme, administratrix on a judgment against the intestate, suggesting a default.

Vide 2 R.

Raym. 1510.

3 D. A. 381.

p. 6.

2 Vent. 84.

1 Sid. 228.

—, to wit, *A. B.* late of, &c. Esq; and *E.* his wife, administratrix of all and singular the goods and chattels, rights and credits, which were of *B. C.* at the time of his death, who died intestate lately called, &c. were summoned to answer *P. B.* of a plea, that they render to him 223*l.* which they owe him and unjustly detain, &c. And whereupon the said *P.* by *L. R.* his attorney saith, that *whereas* the said *P.* lately in the court of our lord the king now here, to wit, in the term of *St. Michael* in the 20th year of the reign of &c. at *W.* in the county of *M.* by the consideration of the same court recovered against the said *B. C.* in his life-time, as well a certain debt of 220*l.* as 60*s.* which in the same court were adjudged to the said *P.* for his damages which he had by occasion of the detaining that debt whereof the said *B. C.* was convicted, as by the record and process thereupon remaining in the same court here more fully appeareth; which said judgment

judgment still remaineth in full force and effect, no ways reversed or annulled; and the said *P.* hath not as yet sued out execution against the said *B. C.* upon the said judgment recovered in form aforesaid. *And* ^{Devasavit} the said *P.* further saith, that divers goods ^{seignior} and chattels which were of the said *B. C.* at the time of his death, to the value of the debt and damages aforesaid, at *W.* aforesaid, have come to the hands of the said *A.* and *E.* to be administered; and that the said *A.* and *E.* afterwards, to wit, on the 2th day of *April* in the 30th year of the reign of *Ed.* at *W.* valued the said goods and chattels, and disposed of and converted the same to the proper use of the said *A.* the said *P.* being no ways satisfied of his debt and damages aforesaid. *Whereby* an action accrued to the said *P.* to demand and have of the said *A.* ^{Actio accrevit.} and *E.* the said 223*l.* Yet the said *A.* and *E.* altho' often requested, have not yet rendered, nor has either of them yet rendered the said 223*l.* to the said *P.* but have hitherto refused, and still do refuse, to render the same to him: Wherefore he saith he is injured, and hath damage to the value of 20*l.* And thereof he bringeth suit, *Ed.*

And the said *A.* and *E.* by *T. G.* their attorney come and defend the force and injury wh^{er}n, *Ed.* and say that the said *P.* ought not to have or maintain his said action thereupon against them, because they say that they the said *A.* and *E.* have fully administered all the goods and chattels which

Traverse.

were of the said *B. C.* at the time of his death in their hands to be administred; and that they have not, nor on the day of suing out the original writ of the said *P.* nor at any time afterwards, had any goods or chattels which were of the said *B. C.* at the time of his death in their hands to be administred; *Without this*, that they the said *A.* and *E.* have wasted those goods and chattels, and disposed of and converted the same to the proper use of the said *A.* as the said *P.* has by his said declaration above supposed; and thus they are ready to verify: Wherefore they pray judgment, if the said *P.* ought to have and maintain his said action thereupon against them.

Replication.

And the said *P.* saith, that he by any thing by the said *A.* and *E.* in pleading above alledged ought not to be barred from having his said action thereupon against them, because he saith, as before, that the said *A.* and *E.* have wasted the goods and chattels which were of the said *B. C.* at the time of his death, to the value of the said debt and damages, and disposed of and converted the same to the proper use of the said *A.* as the said *P.* hath above declared against them: And this he prayeth may be inquired of by the country.

*Declaration of
a piece of
term, in right
in a bond a-
gainst the ad*

Elsewhere, as it appears of the term of Easter, in the thirty-second and thirty-third years of the reign of King *Charles II.* on the forty-fifth roll, it is thus contained:

Here-

Hertfordshire, to wit, *R. B.* late of — *administrator of the obligor.*
 Gentleman, administrator of all and singular the goods and chattels, rights and credits, which were of *W. P.* deceased, otherwise lately called *W. P.* of *R.* in the county of *E.* yeoman, was summoned to answer *I. P.* of a plea, that he tender to him 16*l.* of lawful money of *England*, which he unjustly detained from him; *for that*, to wit, that whereas the said *W.* in his life-time, to wit, on the 19th day of *May* in the 25th year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. at *H.* in the county aforesaid, by his writing obligatory sealed with the seal of the said *W.* And to the court of our said lord the king now here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *J.* in the said 16*l.* to be paid to the said *J.* when he should be thereunto afterwards requested: Yet the said *W.* in his life-time, and the said *R.* after the death of the said *W.* although often requested, &c. have not paid, nor hath either of them paid the said 16*l.* to the said *J.* but the said *W.* in his life-time, and the said *R.* after the death of the said *W.* intirely refused to pay him the same, and the said *R.* still refuseth to pay him the same, and unjustly detaineth, to the damage of the said *J.* of 10*l.* And thereof he bringeth suit, &c.

And now at this day, to wit, on the octave of *St. Hilary* in this same term, to

*Plea, in repleve
inced to be
sent in
1101. for
rent on a lease.*

Protestation.

which day the said *R.* had leave to imparl to the said original writ, and then to answer, &c. came as well the said *J.* by his said attorney, as the said *R. B.* by *W. B.* his attorney, and the said *R.* defendeth the wrong and injury when, &c. and saith that the said *J. P.* ought not to have or maintain his said action thereupon against him; because he saith, that by a certain indenture made at *H.* in the county aforesaid, on the 12th day of *February* in the 28th year of the reign of our sovereign lord *Charles* the II. now king of *England*, &c. between the said *R. B.* by the name of *R. B.* of the city of *L.* pewterer, of the one part, and the said *W.* by the name of *W. P.* of *R.* in the county of *E.* yeoman, of the other part, The counterpart of which sealed with the seal of the said *W.* bearing date the same day and year, the said *R.* bringeth here into court, it is witnessed, that the said *R.* for and in consideration of the yearly rent and covenants in the same relieved, and mentioned to be paid, done and performed, on the part and behalf of the said *P. W.* his executors, administrators and assigns, as in the same is expressed, and for other good considerations the said *R. B.* thereunto moving, had demised, granted, and to farm let, and by the said indenture did demise, grant, and to farm let, to the said *W.* all that messuage or farm-house called *Hunter's farm*, otherwile *Hunter's hal*, situate and being in the parish of *Spyping* in the county

county of *Essex*, with all and singular the houses, out-houses, buildings, barns, stables, yards, orchards, and gardens thereunto belonging; Except and always reserved out of the said lease to the said *R.* his heirs and assigns, a room in the said messuage called the parlour, and also a room or chamber over the same, with free liberty of ingress, egress and regress, to and for him and them, his and their servants and assigns, into, out of and from the said rooms, at his and their free-will and pleasure, during the said term; and also except and always reserved to the said *R.* his heirs and assigns, all and all manner of woods, underwoods, timber-trees, and all other trees whatsoever, and the tops, and shreadings of them and every of them, and all hedge-rows standing, growing or being, or which at any time after during the said term by the said indenture granted should stand, grow or be in or upon the said demised premises, or any part or parcel thereof, with free liberty of ingress, egress and regress, to and for the said *R.* his heirs and assigns, with servants, labourers, horses, carts and carriages, at times convenient in the year to fell, cut down, grub up, square and saw the same, at his and their free-will and pleasure, leaving and allowing wood and timber for botes and fire-wood: To have and to hold the said messuage or farm, lands and premises, in the said indenture before mentioned to be demised and granted, with their

Q +

and

and every of their appurtenances, (except as before excepted) to the said *W.* his executors, administrators and assigns, from the feast-day of the annunciation of the blessed virgin *Mary* then next ensuing the date of the said indenture, unto the full end and term of seven years thence next ensuing, and fully to be complete and ended: Yielding and paying therefore yearly and every year, during the said term, to the said *R.* his heirs or assigns, the yearly rent or sum of 44 *l.* of lawful money of *England*, at the two most usual feasts or days of payment in the year, *to wit*, at the feast of *St. Michael* the archangel, and the annunciation of the blessed virgin *Mary*, by equal portions; as by the said indenture, among other things, more fully appeareth. By virtue of which said lease the said *W.* afterwards, *to wit*, on the morrow of the said feast of the annunciation of the blessed virgin *Mary* next after the date of the said indenture, entered into the said demised premises, with the appurtenances, and was possessed thereof, and had, held, occupied and enjoyed the said demised premises, from the said feast of the annunciation of the blessed virgin *Mary* last mentioned, until and after the feast of *St. Michael* the archangel in the 10th year of the reign of our said lord the present king; and afterwards, *to wit*, on the 23d day of *December* in the 30th year aforesaid, being so possessed thereof, at *H.* aforesaid in the
county

county aforesaid, died intestate : After whose death, *to wit*, on the last day of *February* in the 31st year of the reign of our said lord the present king, at *H.* aforesaid in the county aforesaid, administration of all and singular the goods and chattels, rights and credits, which were of the said *W.* was in due manner committed by *H.* by divine permission bishop of *London*, to the said *R.* And the said *R.* in fact saith, that at the said feast of *St. Michael* last mentioned, 110*l.* of rent for the said premisses were due and in arrear to the said *R.* and were unpaid at the time of the death of the said *W.* and that he the said *W.* upon the said feast of *St. Michael*, or at any time afterwards, did not pay the said 110*l.* or any part thereof, nor cause the same or any part thereof to be paid to the said *R.* And the said *R.* further saith, *Intestate indebted to defendant on a bond in 100*l.** that the said *W. P.* in his life-time, *to wit*, on the 12th day of *February* in the 28th year of the reign of our said sovereign lord *Charles II.* now king of *England*, &c. at *H.* aforesaid in the county aforesaid, by his writing obligatory sealed with the seal of the said *W.* Which the said *R.* bringeth here *Profert.* into court, the date whereof is on the same day and year, became held and bound to the said *R.* in 100*l.* of lawful money of *England*, to be paid to the said *R.* when he should be thereunto afterwards requested. And that the said *R.* further saith, that as well the said 110*l.* for the rent aforesaid, as the said 110*l.* mentioned in the said writing

obl.

Affets only to
64*l.* 17*s.* 6*d.*

Which defen-
dant returns.
See Andrews
305, 328.

Plene admini-
stravit.

W. P. (the in-
testate) named
in the indenture
and bond,
and W. P. named
in the declara-
tion, are
the same per-
son.

obligatory, at the time of the death of the said W. and after his death, were true and just debts, and truly and justly due to the said R. and then and still unpaid to the said R. And that divers goods and chattels which were of the said W. at the time of his death, to the value of 64*l.* 17*s.* and 6*d.* and no more, after the death of the said W. came to the hands of the said R. as administrator as aforesaid: Which said goods and chattels the said R. retaineth in his own hands, in satisfaction of the said debts due to the said R. by the said W. in his life-time, in form aforesaid. And the said R. further saith, that he hath fully administered all the goods and chattels which were of the said W. at the time of his death in the hands of the said R. to be administered; and that he hath no goods and chattels which were of the said W. at the time of his death in his hands to be administered, nor had on the day of exhibiting the said bill, nor at any time afterwards, except goods and chattels to the value aforesaid, which are not sufficient to satisfy the said debts, and which are bound and charged with the payment of the said several debts; and this he is ready to verify: Wherefore he prayeth judgment if the said J. ought to have or maintain his said action thereupon against him, &c. With this, that the said R. will verify that the said W. P. in the said indenture and writing obligatory named, and the said W. P. in the declaration of the said J. named, are one and the same person, and not other nor different.

And

And the said J. prayeth oyer of the said *Replication,*
 writing obligatory, and it is read to him; *Oyer of the*
 and he also prayeth oyer of the condition of *bond and con-*
 the said writing obligatory, and it is read to *dition.*
 him in these words, *to wit,* The condition *Bond condi-*
 of this obligation is such, that if the above- *tioned for per-*
 bounden *W. P.* his heirs, executors, admi- *formance of*
 nistrators and assigns, do and shall from time *the covenants*
 to time, and at all times hereafter, well and *in the lease.*
 truly pay, observe, perform, fulfil, hold and
 keep all and singular the covenants, grants,
 articles, provisos, promises, conditions and
 agreements, which in his and their parts and
 behalf are and ought to be paid, observed,
 performed, fulfilled, held and kept, com-
 prized, specified and declared, in and by
 one pair of indentures of lease bearing the
 date above written, made between the above-
 named *R. B.* of the one part, and the said
W. P. of the other part, and that in and by
 all other things, according to the tenor, effect
 and true meaning of the same indentures of
 lease; then this obligation shall be void, or
 else it shall stand in full force; Which being
 read and heard, the said J. saith, that he
 by any thing by the said *R.* above by plead-
 ing alledged, ought not to be barred from
 having his said action thereupon against
 him; *Because protesting,* that the goods and
 chattels which were the goods and chat- *Protestando*
 trels of the said *W.* at the time of his *that the assets*
 death; and came to the hands of the said *are above the*
R. to be administrated, were of greater value than *value of 64 l.*
 the sum of 64 l. 17 s. and 6 d. *17 s. 6 d.*
And also pro- And that de-
testing, findant hath

affixs sufficient, &c.

Says the indenture mentioned in the plea, and in the condition of the bond, are the same; and that the indenture was not indebted to the defendant for rent in above 30l.

testing, that he the said *R.* had divers goods and chattels, which were the goods and chattels of the said *W.* at the time of his death, sufficient to satisfy the said *J.* his said debt, and also to satisfy the said *R.* as much money and more as was due to the said *R.* by the said *W.* in his life-time; *For plea*, the said *J.* saith, that the said indenture in the said plea above mentioned, is the same indenture which is mentioned in the condition of the said writing obligatory. *And* the said *J.* further saith, that the said *W.* at the time of his death was not indebted to the said *R.* for the said rent in the said plea of the said *R.* above mentioned, above the sum of 30*l.* and this he is ready to verify: Wherefore he prayeth judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

Demurrer.

And the said *R.* saith, that the said plea of the said *J.* above by replying pleaded, in manner and form aforesaid, and the matter therein contained, are not sufficient in law to maintain the said action of the said *J.* against the said *R.* To which the said *R.* hath no need, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify: Wherefore for default of a sufficient replication in this behalf, the said *R.* as before prayeth judgment, and that the said *J.* may be barred from having his said action thereupon against the said *R.* &c. And for cause of demurrer

in

in law upon the said plea, the said *R.* according to the form of the statute in such case made and provided, declareth, and to the court here sheweth these causes following, *to wit* that the said plea is double and incertain, and for that the said plea wanteth form, &c.

And the said *J.* saith, that the said plea *Joinder.* of the said *J.* above by replying pleaded in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to maintain the said action of the said *J.* against the said *R.* which said plea, and the matter therein contained, the said *J.* is ready to verify and prove as the court, &c. And because the said *R.* doth not answer the said plea, nor hath as yet any ways denied it, the said *J.* as before prayeth judgment, and his said debt, together with his damages by occasion of the detaining that debt to be adjudged to him, &c. *But be- Continuance by*
cause the court of our said lord the present Cur. advifar.
king here is not advised of giving their vult.
judgment of and upon the premisses, day is thereupon given to the said parties before our lord the king at *W.* until *Wednesday* next after fifteen days of *Easter*, to hear their judgment of and upon the premisses, for that the court of our said lord the present king here is not yet, &c. At which day, before our said lord the king at *W.* the said parties came by their attorneys aforesaid. *But be- Continuance.*
cause the court of our said lord the present king here is not yet advised of giving their judgment of and upon the premisses, day is therefore

therefore given to the said parties before our lord the king at *W.* until *Friday* next after the morrow of the *Holy Trinity*, to hear their judgment thereupon, for that the court of our said lord the present king here is not yet, &c. At which day, before our lord the king at *W.* the said parties come by their attornies aforesaid. *But* becaule the court of our said lord the present king here is not yet advised of giving their judgment of and upon the premisses, day is therefore given to the said parties, before our lord the king at *W.* until *Tuesday* next after three weeks of *St. Michael*, to hear their judgment thereupon, for that the court of our said lord the present king here is not yet, &c. At which day, before our lord the king at *W.* the said parties came by their attornies aforesaid. *Whereupon* the court having seen and fully understood all and singular the premisses, and having maturely deliberated thereupon, for that it appeareth to the court of our said lord the present king here, that the said plea of the said *J.* above by replying pleaded in manner and form aforesaid, and the matter therein contained, are good and sufficient in law for the said *J.* to have and maintain his said action against the said *R.* It is considered, that the said *J. P.* recover against the said *R. B.* his said debt, and also *6 l. 13 s. and 4 d.* for his damages, which he hath sustained as well by occasion of detaining that debt, as for his costs and charges by him expended about his suit in this behalf, adjudged to the said *J.* by the court of our

Continuance.

Judgment for the plaintiff.

Pro mis. 6 l.

13 s. and 4 d.

4 Nov. 1681.

our said lord the present king here, with his assent, to be levied of the goods and chattels which were of the said *W. P.* at the time of his death in the hands of the said *R.* to be administered, if he hath so much in his hands; and if he hath not so much in his hands; then the said damages to be levied of the proper goods and chattels of the said *R.* And the said *R.* in mercy, &c. *Afterwards Satisfaction to wit,* on Monday next after fifteen days of acknowledged, St. Martin in this same term, before our lord the king at *W.* the said *J. P.* came by *J. L.* his attorney and acknowledged himself to be satisfied of the said debt and damages: Therefore the said *R.* is quit of the said debt and damages, &c.

London, to wit, *H. P.* clerk, and *M.* his wife, lately called *M. B.* complain of *P. L.* esq; and *E.* his wife, executrix of the testament and last will of *A. C.* late father of the said *E.* deceased, otherwise called, &c. in the custody of the marshal, &c. of a plea, that they render to them 200*l.* which they unjustly detain from them; *For that to wit,* that whereas the said *A.* in his life-time, *to payment of 20*l.* per annum.* *wit,* on the 1st day of December in the year of our Lord 1674. at *L.* aforesaid, *to wit,* See 2 Salk. 749.
in the parish of *St. Mary le Bow* in the ward of *Cheap*, by his certain writing obligatory sealed with the seal of the said *A.* in his life-time, *And* to the court of our said lady the queen now here shewn, the date whereof is on the same day and year, bound himself, his heirs, executors and administrators, in the penal sum of 200*l.* of lawful money of
England,

Profert.

One quarter
due.

Actio accrevit.

England, to pay to the said *M.* (by the name of *Mrs. M. B.* daughter of *F. B.* of *L.* aforesaid, and of *M.* his wife) the sum of 20*l.* a year, by equal portions, at or upon the four most usual feast-days in the year, *to wit*, on the nativity of our Saviour, the annunciation of the virgin *Mary*, the feast-day of *St. John* the baptist, and the feast of *St. Michael* the archangel, by 5*l.* for every quarter of a year; the first payment to begin upon the feast of *St. John* the baptist next ensuing the date of the said writing; which said sum of 20*l.* should be paid at the then dwelling-house of the said *F. B.* father of the said *M.* for the term of six years next ensuing the first payment, if the said *M.* the now plaintiff should live so long. And the said *H.* and *M.* in fact say, that 5*l.* for one quarter of one year ended at the feast of *St. Michael* the archangel in the year of our Lord 1679. were due, in arrear and unpaid by the said *A.* in his life-time to the said *M.* the now plaintiff while she was sole, and still are due, in arrear and unpaid: *Whereby* an action accrued to the said *M.* while she was sole, to demand and have of the said *A. C.* in his life-time, and also to the said *H.* and *M.* after the marriage between them celebrated, to demand and have of the said *P.* and *E.* after the death of the said *A.* the said 20*l.* But the said *A.* in his life-time, and whilst the said *M.* was sole, altho' often requested, &c. thereunto by the said *M.* and the said *P.* and *E.* after the death of the said *A.* altho' often requested, &c. thereunto by the said

ſaid *M.* whilſt ſhe was ſole, and by the ſaid *H.* and *M.* after the marriage between them celebrated, have not paid, nor hath either of them paid the ſaid 200*l.* to the ſaid *M.* whilſt ſhe was ſole, or to the ſaid *H.* and *M.* or to either of them, after the marriage between them celebrated, but they intirely reſuſed, and the ſaid *P.* and *E.* ſtill entirely reſuſe to pay them the ſame, to the damage of the ſaid *H.* and *M.* of 40*l.* And thereof they bring ſuit, &c.

Cumberland, to wit, *R. W.* late of, &c. *Declaration in ſon and heir of W. W. deceased, otherwise called, &c. and B. W. late of the ſame, widow, deviſee of the ſaid W. of divers of his lands and tenements, were ſummoned to anſwer to E. S. eſq; in a plea, that they render to the ſaid E. 100*l.* which they owe to and unjuſtly detain from him, &c. And whereupon the ſaid E. by T. B. his attorney ſaith, that Whereas the ſaid W. the father of the ſaid R. (of whom the ſaid R. is ſon and heir, and the ſaid B. is deviſee as aforeſaid) in his life-time, to wit, on the 2d day of September in the 6th year of the reign of his preſent majeſty, at W. aforeſaid, by a certain writing obligatory acknowledged himſelf to be bound to the ſaid E. in 100*l.* to be paid to the ſaid E. when he the ſaid W. ſhould be uncerunto required; and the ſaid W. did by the ſaid writing obligatory bind himſelf and his heirs well and faithfully to make the ſaid payment: Nevertheless the ſaid W. in his life-time, or the ſaid R. and B. (which*

*dibt on a bond
againſt the
heir and de-
viſee of the
obligor.*

VOL. II. R ſaid

saïd *R.* is son and heir of the saïd *W.* and which saïd *B.* is devisee of the saïd *W.* of divers of his lands and tenements as aforesaid, by his last will made at *W.* aforesaid, after the 25th day of *March* in the year of our Lord 1697. whereof the saïd *W.* at the time of his decease had a power of disposing by his saïd last will) after the death of the saïd *W.* (alho' often requested) have not, nor hath any of them rendered to the saïd *E.* the saïd 100*l.* or any part thereof; but they have wholly denied, and the saïd *R.* and *B.* still do deny to render the same to the saïd *E.* Whereby the saïd *E.* saith that he is prejudiced and damnified to the value of 10*l.* And thereof he bringeth suit, &c. And he bringeth here into court the saïd writing obligatory, which testifieth the debt aforesaid in form aforesaid, the date whereof is the day and year in that respect above-mentioned, &c.

Profert.

*Judgment by
Nil dicit a-
gainst the ben.*

And the aforesaid *R.* in his own proper person cometh and defendeth the force and injury when, &c. and saith nothing in bar or preclusion of the aforesaid action of the aforesaid *E.* whereby the saïd *E.* remaineth against the saïd *R.* thereof undefended: Therefore it is considered, that the saïd *E.* recover against the saïd *R.* his debt aforesaid, and his damages by reason of detaining that debt to 8*0s.* by the court here adjudged to the saïd *E.* by his assent, according to the form of the statute in such case made and provided. And the saïd *R.* in mercy, &c.

And

And the said B. by ——— her attorney ^{Plea, not de-}
cometh and defendeth the force and injury ^{vice.}
when, &c. and saith that she ought not to
be charged with the said debt by virtue of
the said writing obligatory, because she saith
that she is not devisee of the said W. of any
of his lands and tenements, as by the said
declaration is above supposed: And of this
she putteth herself upon the country, &c.

*Of Easter term in the sixteenth year of
the reign of king George the third.*

*To the justices of our lord the king
of the bench.*

Middlesex, **H.** B. spinster, by J. S. her at- ^{Bill in debt on}
to wit, ^{a bond against} torney complaineth of H. V. ^{a member of}
etiq; otherwise called, &c. (he having pri- ^{parliament.}
vilege of parliament) of a plea, that he ren- ^{Lil. Ent 501.}
der to her [as in a bill * against an attorney in ^{2 Id. Raym.}
debt on a bond to] bringeth suit, &c. And ^{1442.}
hereupon the said H. prayeth process of the ^{2 Strange 734.}
lord the king, according to the form of the ^{Process prayed.}
statute in such case made and provided, to be ^{Stat. 8 & 9}
made to her thereupon: And it is thereupon ^{W. 3.}
granted to her, &c. And she bringeth here ^{Stat. 12 & 13}
^{W. 3. c. 3.} ^{Process of the}
^{b. n. d.}

* It seems prudent to omit these words of course in
such bill, viz. "But contriving and fraudulently intend-
ing craftily and subtilly to deceive and defraud."

that he render to her 840*l.* which he oweth to her, and unjustly detaineth from her, &c. For that whereas [*Verbatim as in the bill to*] damage of the said *H.* of 20*l.* as it is said, and to her by judgment for many defaults: And have you there this writ. Witnels, &c.

Elsewhere, as it appears of the term of the *D* *claration of*
Holy Trinity, in the second year of the reign *a trecent*
of king *James II.* on the 12th roll, it is *term, in d*
thus continued: *Cleffere*, to wit, *T. II.* *on a bond a-*
and *J. II.* the executors of the testament *gainst the ex-*
and last will of *E. II.* deceased, lately called *ch'rs of. See*
E. II. of the town aforesaid, in the county *Ca th. 11.*
of *G. tanner*, was summoned to answer *G. j.* *3 Mod. 114.*
of a plea that they render to him 40*l.* of
lawful money of *England*, which they owe
him and unjustly detain; *For that*, that is
to say, that whereas the said *E.* in his life-
time, that is to say, on the 11th day of
December in the 34th year of the reign of the
lord *Charles II.* late king of *England*, &c. at
T. in the county aforesaid, by his certain
writing obligatory sealed with the seal of the
said *E.* in his life-time, and to the court of
our said lord the now king here shewn, the *Profit.*
date whereof is on the same day and year,
acknowledged him to be held and firmly
bound to the said *G.* in the said 40*l.* to be
paid to the said *G.* when he should be there-
unto requested: *Nevertheless* the said *E.* in
his life-time, and the said *I.* and *T.* after the
death of the said *E.* altho' often requested,
&c. have not paid the said 40*l.* to the said

G. but hitherto to pay him the same have intirely refused, and the said T. and T. still wholly refuse to pay him the same, and unjustly detain, to the damage of the said C. of 100 s. And thereof he bringeth suit, &c.

Injarlance.

And now at this day, that is to say, on the morrow of the *Holy Trinity* in this same term, to which day the said T. and T. had leave to imparle, and then to answer before our lord the king at W. come as well the said G. by his attorney afore said, as the said T. and T.

Plea, Plene administravit.

by M. J. their attorney; And the said T. and T. defend the wrong and injury then, &c. and say, that the said G. ought not to have or maintain his said action thereof against them, because they say, that they the said T. and T. before the day of issuing the said original writ, had fully administrated all the goods and chattels which were of the said E. H. at the time of his death; and that they have no goods and chattels which were of the said E. H. at the time of his death in their hands to be administrated, nor had they on the day of issuing the said original writ. nor at any time afterwards; and this they are ready to verify: Wherefore they pray judgment, if the said G. ought to have or maintain his said action thereof against them, &c.

Repiscation.

And the said G. saith, that he by any thing by the said T. and T. above in pleading alledged, ought not to be precluded from his said action thereof against the said T. and T. because he saith that the said T. and T.

have

had, and on the day of issuing the said original writ, that is to say, on the 21st day of *April* in the 2^d year of the reign of our lord *James II.* now king of *England*, &c. had divers goods and chattels which were of the said *E. II.* at the time of his death in their hands to be administred, to the value of the debt aforesaid, whereof they could have satisfied the said *G.* for his debt aforesaid, *to wit*, at *T.* in the county aforesaid; and he prayeth that this may be inquired of by the country: *And* the said *T.* and *T.* do the like, *Issue.*
Et c. *And* because the said issue above joined between the said parties ought to be tried by men of the county palatine of *C.* that is to say, by men of the neighbourhood of *T.* aforesaid in the said county of *C.* where the writ of our lord the king runneth not, and not elsewhere; therefore the record of the said plaint is sent to the justices of the said lord the king of the said county of *C.* so that the said justices, by writ of our said lord the king of that county to be duly made, cause it to be commanded to the sheriff of the same county, that he cause to come before the said justices of our said lord the king of the said county of *C.* at the next sessions for the said county after the said record shall be delivered to them, twelve free and lawful men of the neighbourhood of *T.* aforesaid in the said county of *C.* By whom, *Et c.* And who neither, *Et c.* To recognize, *Et c.* Because as well, *Et c.* when the verification and issue aforesaid shall be made and tried,

that then the said justices send to our lord the king at *W.* the record of the said plaint, with the whole thereof which shall be done thereupon in the court of our said lord the king there before them, at a certain day which the said justices of the county palatine aforesaid in the same court there shall prefix to the said parties, to hear judgment thereupon, &c. And it is told to the said *G.* that he sue with effect at his peril, &c.

Declaration in Middlesex, to wit, C. B. late of the Inner
delivered on a bail- *Temple, London, gent. otherwise called C.*
bond. *B. of the Inner Temple, London, gent. was*

summoned to answer *A. C.* assignee of Sir *R. H.* knt. and *E. B.* esq; late sheriff of the said county of *M.* according to the form of the statute in such case lately made and provided, of a plea that he render to her 20*l.* which he oweth her and unjustly detaineth, &c. And whereupon the said *A. C.* by *J. B.* her attorney saith, that *whereas* one *W. L.* after the first day of the term of the *Holy Trinity* in the year of our Lord 1706, *to wit*, on the 4th day of *April* in the 10th year of the reign of our lord the present king, at *W.* in the said county of *M.* was in due manner arrested by the said Sir *R. H.* and *E. B.* (being sheriff of the said county of *M.*) by virtue of a certain writ of our lord the present king of *Copias ad respondendum*, directed to the sheriff of the county of *M.* and out of the court of our said lord the present king (the same being then here, *to wit*,
 at

See Stat. Co.
 444, 643
 2 Stra. 727,
 893.

at *Westminster* in the county of *M.*) before that time in due manner issued, and returnable here from the day of *Easter* in fifteen days then next ensuing, at the suit of the said *A. C.* of a plea of trespass, and also in a certain plea of debt upon demand 10*l.* And whereas the said Sir *R. H.* and *E. B.* (being sheriff of the county of *M.* aforesaid) took bail from the said *W. L.* of and upon the said arrest for his appearance, according to the tenor of the said writ, *to wit*, the said *W. L.* one *W. B.* and the said *C. B.* (as bail for the said *W. L.*) on the said 4th day of *April* in the said 10th year of the reign of our said lord the present king, at *W.* aforesaid, by their certain writing obligatory jointly and severally allowed themselves to be held and firmly bound to the said Sir *R. H.* and *E. B.* (being sheriff of the said county of *M.*) by the name of Sir *R. H.* and *E. B.* sheriff of the said county of *M.* in the said 20*l.* to be paid to the said sheriff or his assigns, when they the said *W. L.* *W. B.* and *C. B.* or either of them, should be thereunto requested, with a condition to the said writing obligatory underwritten, that if he the said *W. L.* should appear before the justices of our said lord the king at *W.* from the day of *Easter* in fifteen days, to answer to the said *A. C.* of a plea of trespass, and also in a certain plea of debt upon demand 10*l.* that then the said obligation should be void and of no force, otherwise it should stand and remain in its full strength, force and

and effect, as by the said writing obligatory, and the condition thereof (relation being thereunto had) may more fully appear. *And* the said *A. C.* in fact saith, that the said *W. L.* did not appear before the justices of our said lord the present king here, *to wit*, at *W.* aforesaid, from the day of *Easter* in fifteen days, in the said condition mentioned, according to the form and effect of that condition, by reason whereof the said writing obligatory became forfeited. *And* the said *A. C.* in fact saith, that afterwards, *to wit*, on the 19th day of *May* in the year of our Lord 1774, at *W.* aforesaid, the said Sir *R. H.* and *E. B.* (being sheriff of the said county of *M.*) by the name of Sir *R. H.* knt. and *E. B.* esq; sheriff of the county of *M.* within named, at the request of the said *A. C.* the plaintiff in that suit, by his indorsement in due manner assigned the said writing obligatory to the said *A. C.* according to the form of the statute in such case made and provided, by then and there indorsing the said writing obligatory, and attesting the same under his hand and the seal of his office of sheriff of the county of *M.* aforesaid, in the presence of two credible witnesses, *to wit*, of *C. T.* and *J. C.* according to the form of the said statute, the said 20^l. in the said writing obligatory contained then and there being unpaid, whereof the said *C. B.* then and there had notice; whereby and by force of the premisses, and also by force of the said statute, an action accrued to the said *A.*

G.

C. as assignee of the said Sir R. H. and E. B. sheriff of the said county of M. to demand and have of the said C. B. the said 20*l.* Yet the said C. B. altho' often required, hath not yet rendered the said 20*l.* to the said Sir R. H. and E. B. or to the said A. C. or either of them, but hath hitherto altogether refused to render the same to them or to either, and yet doth refuse to render the same to the said A. C. and the said 20*l.* still remain unpaid: Wherefore she saith she is the worse, and hath damage to the value of 10*l.* And thereof she bringeth suit, &c. And she *Profert.* bringeth here into court as well the said writing obligatory which testifieth the said debt in form aforesaid, the date whereof is the 4th day of *April* in the said 10th year of the reign of our said lord the present king, as the said indorsed writing thereupon, the date whereof is the said 19th day of *May* in the year of our Lord 1774. aforesaid, whereby the said A. C. sufficiently appeareth to the court here to be assignee of the said sheriff of the debt and writing obligatory aforesaid, and thereof to have her said action, &c.

Elsewhere, as it appears of the term of *Declaration of the Holy Trinity*, in the 13th year of the reign of king George III. on the roll, it is thus contained: *Suffex*, to wit, E. A. late of widow, administratrix of all and singular the goods and chattels, rights and credits, which were of J. A. gent. deceased, who died intestate, lately called J. A. of R., otherwise E. in the county aforesaid, *a precedent term in debt for rent upon articles against an administratrix.* Salk. 325. Carth. 511. 12 Mod. 288. Vide 2 R. said, Raym. 1510.

3 D. A. 381.

P. 6.

2 Vent. 84.

1 Sid. 228.

Profert.

Habendum.

Reddendum.

Testator entered.

said, was summoned to answer *H. G. esq;* of a plea, that she render to him 60*l.* of lawful money of *Great-Britain*, which she unjustly detaineth from him; *For that, to wit,* that *whereas* by a certain writing of articles made at *H.* in the county aforesaid, on the 11th day of *January* in the year of our Lord 1761, between the said *H.* by the name of *H. G. of B.* within the parish of *E. G.* in the county of *S. esq;* of the one part, and the said *J.* by the name of *J. A. of R.* otherwise *E.* in the county aforesaid, gent. of the other part; *The* counterpart whereof, sealed with the seal of the said *J.* the said *H.* bringeth here into court, bearing date the same day and year, the said *H.* demised to the said *J. A.* all those two several pieces or parcels of land called the *Deans*, containing by estimation 22 acres, with the appurtenances, in *H.* aforesaid in the county aforesaid; and also all those four pieces of marsh-land called *H. marsh*, containing by estimation 32 acres, with the appurtenances, in *H.* aforesaid: *To hold* to the said *J. A.* his executors and administrators, from the feast of the birth of our Lord then last past for eleven years, *At* and under the yearly rent of 30*l.* To be paid half-yearly during the said term, *to wit,* at the feasts of *St. John* the baptist, and the birth of our Lord, by equal portions, or within one and twenty days after the said feasts, as by the said writing more fully appeareth. *By virtue* of which said demise the said *J. A.* entered into the said premises,

with the appurtenances, and was possessed thereof until and on the feast of the birth of our Lord in the year of our Lord 1776, and by 21 days thence next ensuing. *And 60 l. Rent accrued.* of the said rent for two years ended at the said feast of the birth of our Lord in the year 1775, and by 21 days thence next ensuing, were in arrear in the life of the said J. and are still unpaid: *Whereby an action* *Actio accre-* accrued to the said H. to demand and have *vit.* of the said J. in his life-time, and of the said E. after the death of the said J. (*To Administration* *which said E. administration of all and sin-* committed to *defendant.* gular the goods and chattels, rights and credits, which were of the said J. at the time of his death, after his death was committed at H. aforesaid in the county aforesaid) the said 60 l. Yet the said J. in his life-time, and the said E. after his death, altho' often requested, &c. have not yet paid the said 60 l. to the said H. but they have hitherto intirely refused, and the said E. still refuseth to pay him the same, to the damage of the said H. of 20 l. And thereof he bringeth suit, &c.

And now at this day, to wit, on the oc- *Imparlanee.* tave of St. Hilary in this same term, until which day the said E. had licence to imparl to the said original bill, and then to answer, &c. come as well the said H. G. by his said attorney, as the said E. by J. L. her attorney; *And the said E. defendeth the force and in-* jury when, &c. *And as to 30 l. parcel of* *As to part,* the said 60 l. in the said declaration men- *Non detinet,* tioned

Issue.

*As to the residue, a bond entered into by the intestate to the defendant before their marriage to leave her 1000*l.* at his death.*

Profert,

tioned to be in arrear, of the said rent for the first year of the said two years, the said *E.* saith that she doth not detain from the said *H.* the said 30*l.* nor any parcel thereof, in manner and form as the said *H.* above complaineth against her; and of this she putteth herself upon the country: *And* the said *H.* doth so likewise, &c. *And* as to the other 30*l.* residue of the said 60*l.* the said *E.* saith, that the said *H. G.* ought not to have or maintain his said action thereupon against her, because she saith, that in the life-time of the said *J.* and whilst she the said *E.* was sole, *to wit,* on the 20th *January* in the year of our Lord 1758. at *H.* aforesaid in the county aforesaid, he the said *J. A.* by the name of *J. A.* of *R.* in the county of *S.* gent. by his certain writing obligatory sealed with the seal of the said *J.* *And* to the court of our said lord the king now here shewn, bearing date the said 20th day of *January* in the year of our Lord 1758 aforesaid, acknowledged himself to be held and firmly bound to the said *E.* whilst she was sole, then by the name of *E. R.* of *R.* in the county aforesaid, spinster, in 2000*l.* of lawful money of *Great Britain*, to be paid to the said *E.* when he should be afterwards thereunto required, with a condition to the said writing obligatory underwritten, reciting, that whereas a marriage was by the blessing of God in a short time to be solemnized between the said *J. A.* and her the said *E.* so that if the said *E.* should survive the said *J.* and that the said

J. should die before the said *E.* then if the said *J. A.* should leave, or if his heirs, executors or assigns should well and truly pay, or cause to be paid to the said *E.* her executors, administrators or assigns, the full and entire sum of 1000*l.* of lawful money of Great Britain, within one month after the death of the said *J. A.* without fraud or deceit, that then the said obligation should be void, otherwise to stand and remain in its full force and virtue; as by the said writing obligatory, and the condition of the same writing obligatory, brought here into court, more fully appeareth. And the said *E.* further saith, *Defendant and intestate inter-married.* that afterwards, *to wit*, on the 1st day of *March* in the said year of our Lord 1758, at *H.* aforesaid in the county aforesaid, she the said *E.* married with the said *J. A.* And *He died.* afterwards, and before the day of suing out the writ of the said *H. to wit*, on the 1st day of *March* in the year of our Lord 1775, the said *J. A.* died intestate at *H.* aforesaid in the county aforesaid, and did not leave to the said *E.* the sum of 1000*l.* nor any part thereof; and that at any time after the death of the said *J. A.* hitherto the sum of 1000*l.* or any part thereof, hath not been paid by the heirs or assigns of the said *J. A.* or any of them. *and did not leave her 1000*l.** And the said *E.* further saith, *Administration granted to defendant.* that after the death of the said *J. to wit*, on the 13th day of *March* in the year of our Lord 1775, at *H.* aforesaid in the county aforesaid, administration of all and singular the goods and chattels, rights and credits, which

Praet. Reg.
37, 43.

Affets to 230l.

Which she retains.

No other assigns.

Bound in force.

which were of the said *J. A.* at the time of his death, who died intestate, was in due form of law committed to the said *E.* by *T. B.* doctor of laws, commissary or principal official lawfully appointed of the reverend father in God *John* by divine permission lord bishop of *Chichester*, and for the whole archdeaconry of *L.* in the diocese of *C.* aforesaid, to whom the committing the said administration of right belonged. After the committing which said administration, divers goods and chattels which were of the said *J.* at the time of his death, to the value of 230*l.* and not more, came to the hands of the said *E.* by virtue of the said administration, to wit, at *H.* aforesaid in the county aforesaid: Which said goods and chattels the said *E.* retaineth in her hands, in part of satisfaction of the said writing obligatory. And the said *E.* further saith, that on the day of suing out the said writ of the said *H.* or before that time, or at any time afterwards, there did not come to the hands of the said *E.* any other or more goods and chattels which were of the said *J.* at the time of his death, besides the said goods and chattels to the value of the said 230*l.* and not more, and which are not sufficient to satisfy to the said *E.* the said sum of 1000*l.* mentioned in the condition of the said writing obligatory; and this she is ready to verify: Wherefore she prayeth judgment if the said *H.* ought to have or maintain his said action thereupon against her, &c. With this, that the said *E.* will verify that the said writing

ing obligatory still remaineth in its full force and effect, no ways annihilated or satisfied. And that the said *J. A.* in the said writing obligatory mentioned, and *J. A.* in the said declaration and plea mentioned, are one and the same person, and not other nor different. *Obligor and intestate the same person.*
Geo. Hill.

And the said *H. G.* saith, that he by any thing by the said *E.* above in pleading alleged, ought not to be barred from having his said action thereupon against her the said *E.* because he saith that the said plea above pleaded by the said *E.* in manner and form aforesaid, and the matter therein contained, are not sufficient in law to bar the said *H.* from having his said action thereupon against the said *E.* To which said plea he the said *H.* hath no need, and is not bound by the law of the land in any manner to answer; and this he is ready to verify: Wherefore, for default of a sufficient answer in this behalf, the said *H.* prayeth judgment and his said debt, together with his damages by the occasion of detaining that debt, to be adjudged to him, &c. *Demurrer.*

And the said *E.* saith, that the said plea above pleaded by the said *E.* in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to bar the said *H.* from having his said action thereupon against her the said *E.* which said plea, and the matter therein contained, the said *E.* *Joinder.*

is ready to verify and prove as the court, &c. And because the said *H.* doth not answer to the said plea, nor has as yet in any manner denied the same, she the said *E.* as before prays judgment, and that the said *H.* may be barred from having his said action thereupon against her, &c. But because the court

Continuance.

of our said lord the king now here is not advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until fifteen days of *Easter*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof. At which day before our lord

Continuance.

the king at *W.* the said parties came by their attornies aforesaid. But because the court of our said lord the king now here is not advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until the morrow of the *Holy Trinity*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not advised thereof. At which day before our lord the king at *W.* the said parties came

Continuance.

by their attornies aforesaid. But because, &c. [like continuances to *Michaelmas*, *Hilary*, *Easter*, *Trinity* and *Hilary Terms*.] At which day before our lord the king at *W.* the said parties come by their attornies aforesaid.

*Judgment for
the defendant.*

Whereupon the court of our said lord the king

now

Here having seen and fully understood all and singular the premisses, and having maturely deliberated thereupon, it appeared to the court of our said lord the king now here, that the said plea above pleaded by the said *E.* in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to bar the said *H.* from having his said action against the said *E.* *Therefore it is considered,* that the said *H. G.* take nothing by his said writ, but that he be in the mercy of the court for his false clamour, &c. and that the said *E.* go thereof without day, &c. And it is further considered, that the said *E. A.* recover against the said *H. G.* 14*l.* 10*s.* for her costs and charges laid out by her about her defence in this behalf, adjudged to the said *E.* by the court of our said lord the king now here, by her assent, according to the form of the statute in such case made and provided; and that the said *E. A.* have execution thereof, &c.

*Judgment
signed, 21 Feb.
1778.*

Adjudged in this case, that the debt was only suspended, and not extinguished.

Middlesex, to wit, *F. O.* widow, complaineth of *T. O.* esq; and *H. H.* clerk, in the custody of the marshal, &c. of a plea that they render to her 84*l.* of lawful money of *England*, which they owe her and unjustly detain, *for that,* to wit, that *whereas* by a certain indenture made at the parish of *St. Clement Danes* in the said county of *M.* on the 26th day of *February* in the year of our

*Declaration in
debt for rent
upon a lease
of a rectory,
tithes, &c.*

Profert.

Lord 1682. between the said *F. O.* widow, and relict of *G. O.* doctor of divinity, and late prebendary of the prebend of *L.* founded in the cathedral church of *L.* in the county of *S.* deceased, *M. O.* spinster, daughter of the said *G.* and *F. O.* *H. H.* of *R.* in the county of *W.* esq; and *J. O.* of the *Middle Temple, London,* esq; of the one part, and the said *T. O.* by the name of *T. O.* of *H.* in the said parish of *L.* esq; and the said *H. H.* by the name of *H. H.* vicar of *L.* aforesaid, and prebendary of *L.* aforesaid, of the other part; one part of which said indenture, sealed with the seals of the said *T.* and *H.* the said *F.* bringeth here into court, the date whereof is on the same day and year aforesaid; the said *F. M. H.* and *J.* for and in consideration of the rents and covenants expressed in the said indenture on the part of the said *T.* and *H.* to be performed, by the said indenture demised and to farm let to the said *T. O.* and *H. H.* all that prebend, rectory or parsonage of *L.* aforesaid, with all the tithes of corn and hay growing and renewing, or which at any time during the term by the said indenture demised should grow, arise and renew upon the same, situate, lying and being in the said county of *S.* and the said city and county of *L.* together with all rights, members, pensions, portions, profits, commodities and appurtenances, to the said prebend belonging or in any manner appertaining, together with all and all manner of houses, edifices and structures, yards, gardens,

mens, glebe lands, meadows, pastures, commons, chief-rents, reversions, services, tithes, tithings, fruits, oblations, obventions, emoluments, and all rights, properties, advantages and hereditaments whatsoever, to the said prebend belonging or appertaining (except the presentation and advowson of and to the vicarage of *L.* aforesaid, when and as often as the same should become vacant during the term in the said indenture granted; *To have* and to hold, perceive receive and enjoy all the said prebend, rectory and parsonage, glebe lands, houses, meadows, pastures, commons, tithes, tithings, fruits, oblations, obventions, and all other the premisses whatsoever by the said indenture demised, with the appurtenances, (except before excepted) to the said *T. O.* and *H. H.* their executors, administrators and assigns, from the 30th day of *September* then last past before the date of the said indenture, for, during, and unto the full end and term of twenty years and the half of a year and five months thence next ensuing, and fully to be complete and ended: *Yielding* and paying therefore yearly and every year, during the first twenty years and the half of a year of the said term, to the said *F. O.* her executors, administrators and assigns, the sum or yearly rent of 42 *l.* of lawful money of *England*, at the feasts of the annunciation of the blessed virgin *Mary* and *St. Michael* the archangel, by even and equal portions; the first payment to begin at the feast day of the

Habendum.

Reddendum.

annun-

annunciation of the blessed virgin *Mary* next ensuing the date of the said indenture: *And also yielding* and paying to the said *F. O.* his executors, administrators and assigns, for the last five months of the said term, the sum or rent of 21 *l.* of like lawful money of *England*, upon the last day of the said term, without any deduction, defalcation or abatement to be made of any rent or rents of 16 *l.* 13 *s.* and 4 *d.* payable yearly to the prebendary of *L.* aforelaid, or the pension or pensions of 30 *l.* payable yearly to the vicar choral stall of the said prebend, or the master of the works of the said cathedral church, or the yearly pension of 5 *l.* 6 *s.* and 8 *d.* to the vicarage of *St. Mary* in *L.* or the pension or yearly rent of 8 *s.* to the divinity-reader in the said cathedral-church for the time being, or for tenths due to his majesty or his successors for the said prebend, or for any other sums of money due or to be due for procurations, synodals, or any other charges ordinary or extraordinary, which should be due or become due and issuing therefrom, or for repairs, or any other taxes, charges, assessments or incumbrances whatsoever, as by the said indenture amongst other things more fully appeareth. By virtue of which said demise the said *T. O.* and *H. H.* afterwards, *to wit*, on the 10th day of *March* in the year of our Lord 1682. entered into the said demised premisses, with the appurtenances, and were and still are possessed thereof. *And* 84 *l.* of the said rent for the said premisses, for

Defendants entered.

Rent arrear.

For two years ended at the feast of the annunciation of the blessed virgin *Mary* last past, were in arrear to the said *F.* and still are in arrear and unpaid. *Whereby* an action *Actio accre-* accrued to the said *F.* to demand and have ^{vlt.} of the said *T. O.* and *H. H.* the said 84*l.* Yet the said *T. O.* and *H.* altho' often requested, &c. have not, nor hath either of them yet paid the said 84*l.* to the said *F.* but have hitherto intirely refused, and still do refuse to pay her the same, to the damage of the said *F.* of 100*l.* And thereof she bringeth suit, &c.

And the said *T. O.* and *H. H.* by ——— *Plea, that the*
 their attorney come and defend the force and *plaintiff en-*
 injury when, &c. and say, that the said *F.* *tered into part*
O. the present plaintiff, ought not to have *of the demised*
 or maintain her said action thereupon against *promises be-*
 them, because they say, that after the said *fore any rent*
 demise of the said premisses above specified *was due.*
 in the said declaration, and before any rent
 became due and payable by the said demise
 to the said *F. O.* the present plaintiff, *to wit,*
 on the 20th day of *March* in the year of our
 Lord 1682. aforesaid, she the said *F. O.* the
 present plaintiff, with force and arms, &c.
 entered into a certain chamber called the
 great parlour, parcel of the parsonage-house
 parcel of the said premisses, with the appur-
 tenances, to the said *T. O.* and *H. H.* in
 form aforesaid above demised, and not ex-
 cepted, in and upon the possession of the said
T. O. and *H. H.* thereof, *to wit,* at *L.* aforesaid
 in the county of *S.* aforesaid, and ejected,
 S 4 expelled

expelled and amoved the said *T. O.* and *H. H.* from their possession thereof, and held on the said *T. O.* and *H. H.* so therefrom ejected, expelled and amoved from their said possession thereof, from thence until and after the said feast of the annunciation of the blessed virgin *Mary* in the said declaration last mentioned; and this they are ready to verify: Wherefore they pray judgment, if the said *F. O.* the present plaintiff, ought to have or maintain her said action thereupon against them, &c.

Replication,
Non intravit.

And the said *F.* saith, that she by any thing by the said *T.* and *H.* above in pleading alledged, ought not to be barred from having her said action thereupon against them, because she saith, that she the said *F.* did not enter into the said chamber called the great parlour, parcel of the parsonage-house parcel of the said premisses, with the appurtenances, in form aforesaid demised to the said *T. O.* and *H. H.* nor did she eject, expel and amove them from the same, in manner and form as the said *T.* and *H.* above in pleading have alledged; and this she prayeth may be inquired of by the county. And the said *T.* and *H.* do so likewise, &c. Therefore it is commanded to the sheriff of the county of *S.* that he cause to come before our lord the king and lady the queen at *W.* on — next after — twelve, &c. of the neighbourhood of *L.* aforesaid, by whom, &c. To recognize, &c. Because as well, &c. The same day is given to the parties aforesaid at the same place, &c.

Issue.

Venire a-
warded to the
sheriff of the
county where
the premisses
lie

Northamptonshire, to wit, R. R. the elder, Declaration in
of the parish of D. in the county afore- debt for rent
said, husbandman, was summoned to answer on a lease at
E. F. gent. of a plea, that he render to him will,
100 l. which he oweth him and unjustly de-
taineth: And whereupon the said E. by W.
L. his attorney saith, that whereas the said
E. on the 29th day of December in the year
of our Lord 1698, at the parish of D. afore-
said, demised and to farm let to the said R.
one messuage and four yards of land, lying
and being in the parish of D. aforesaid, and
also one other yard of land lying and being,
&c. with the appurtenances, except out of
the said demise to the said E. F. all that lit-
tle close of meadow called the Goods close,
&c. To hold the said demised premisses, with Habendum:
the appurtenances, (except before excepted)
to the said R. from thenceforth as long as it
should please both the said parties: Yielding Reddendum,
and paying therefore to the said E. as long
as the said R. should hold and enjoy the said
demised premisses, (except before excepted)
after the rate of 50 l. of lawful money of
England by the year, to be paid at the two
most usual feasts, to wit, the feasts of the
annunciation of the blessed virgin Mary and
of St. Michael the archangel, by even and
equal portions. By virtue of which said demise Defendant en-
the said R. entered into the said demised pre- tered.
misses with the appurtenances (except before
excepted) and was possessed thereof, and con-
tinued possessed thereof, for one whole year
thence next ensuing. And 50 l. of the said Rent arrear.
rent,

rent, parcel of the said 100*l.* for the said one year ended at the said feast of St. *Michael* the archangel last past, were in arrear and still are in arrear and unpaid to the said *E.* *Whereby* an action accrued to the said *E.* to demand and have of the said *R.* the said 50*l.* parcel of the said 100*l.* Yet the said *R.* altho' often requested, &c. hath not yet rendered to the said *E.* the said 50*l.* parcel of the said 100*l.* but hath hitherto intirely refused, and still doth refuse to render the same to him. And also whereas the said *E. F.* on the said 29th day of *September* in the said year of our Lord 1698, at *D.* aforesaid, demised and to farm let to the said *R.* one other messuage, &c. with their appurtenances; To have and to hold the said last mentioned tenements with the appurtenances to the said *R.* from thenceforth as long as it should please both the said parties: *Yielding* and paying therefore to the said *E.* as long as the said *R.* should hold and enjoy the said last mentioned demised premisses, after the rate of 50*l.* of lawful money of *England* by the year, at the two moit usual feasts, *to wit,* the feasts of the annunciation of the blessed virgin *Mary* and of St. *Michael* the archangel, by even and equal portions. By *virtue* of which said demise the said *R.* afterwards, *to wit,* on the 1st day of *October* in the said year of our Lord 1698, last mentioned, entered into the said demised premisses with the appurtenances, and was possessed thereof, and continued possessed thereof for one whole year thence next ensuing

Actio acc. evit.

*Laid over
again.*

Habendum.

Reddendum.

*Defendant
entered.*

suving. And 50*l.* of the said rent, residue *Rent arrear.*
 of the said 100*l.* for the said one year end-
 ed at the feast of St. Michael the archangel
 23^d past, were in arrear, and still are in ar-
 rear and unpaid to the said E. *Whereby an Actio accrevit.*
 action accrued to the said E. to demand and
 have of the said R. the said 50*l.* residue of
 the said 100*l.* Yet the said R. altho' often
 requested, &c. hath not yet rendered to the
 said E. the said 50*l.* residue of the said 100*l.*
 but hath hitherto intirely refused, and still
 doth refuse to render the same to him, to
 the damage of the said E. of 50*l.* and there-
 of he bringeth suit, &c.

Middlesex, to wit, M. W. late of London, *Declaration in*
 widow, executrix of the testament and last *debt against*
 will of E. W. of the parish of St. Giles Crip- *an executrix*
 plegate in the county of M. grafier, was sum- *for rent incur-*
 moned to answer H T. of a plea, that she *ed in her own*
 render to him 36*l.* 5*s.* which she *oweth* him,
 and unjustly detaineth, &c. And whereupon
 the said H. by W. M. his attorney saith,
That whereas by certain articles of agreement, *Articles.*
 made at the said parish of St. Giles Cripple-
 gate, on the 23^d day of October in the year
 of our Lord 1689, between the said H. T.
 by the name of H. T. citizen and blacksmith
 of London, of the one part, and the said E.
 by the name of E. W. of the parish of St.
 Giles Cripplegate in the county of M. grafier,
 of the other part, *the counterpart of which* *Profert.*
 sealed with the seal of the said E. the said H.
 bringeth here into court, the date whereof
 is on the same day and year, *the said H de-* *Demise.*
 mised, granted, let and to farm let, to the
 said

Habendum.

Reddendum.

Testator entered.

Makes his will, and defendant executrix, and dies.

said *E.* all those six acres of meadow, more or less, lying and being in the common field called the *Pesthouse-field*, and in a field near a certain house called the *Halfway-house*, and in a field called the *Conduit-field*, in the several parishes of *St. Giles Cripplegate* aforesaid, and *St. Leonard Shoreditch*, in the said county of *M.* To hold and occupy to the said *E.* his executors, administrators and assigns, from the feast of the nativity of our Blessed Lord and Saviour then next ensuing, for the term of 7 years thence next ensuing, and fully to be complete and ended; Yielding and paying therefore yearly the sum of 3 *l.* and 10 *s.* for every acre of the said land, being in the whole 21 *l.* by even and equal portions quarterly at the feast of the annunciation of the blessed virgin *Mary*, the feast of the nativity of *St. John* the baptist, the feast of *St. Michael* the archangel, and the feast of the nativity of our Lord, as by the said articles amongst other things more fully appears; By virtue of which demise the said *E.* entered into the tenements and premisses above demised, with the appurtenances, and was possessed thereof. And being so thereof possessed, the said *E.* afterwards, to wit, on the 1st day of *March* in the 6th year of the reign of our sovereign lord *William*, now king, and sovereign lady *Mary*, late queen of *England*, &c. at the said parish of *St. Giles Cripplegate*, made his testament and last will in writing, and constituted and appointed the said *M.* executrix of the said testament, and afterwards died there, so thereof possessed,

fed, after whose death, the said *M.* there took upon her the burthen of the execution of the said testament; And afterwards, to wit, *Defendant enters.* on the same day and year, entered into the said tenements and premisses above demised and granted, and was possessed thereof by reason of the execution of the said testament; and 36*l.* 5*s.* of the said rent for one year and three quarters of a year at the feast of St. *Michael* the archangel in the 7th year of the reign of our sovereign lord the present king, were in arrear to the said *H.* and are still unpaid; whereby an action *Actio accre-* accrued to the said *H.* to demand and have *vit.* of the said *M.* the said 36*l.* 5*s.* Yet the said *M.* although often requested, &c. hath not yet paid the said 36*l.* to the said *H.* but hath hitherto refused, and still doth refuse to pay him the same. Wherefore he saith he is injured, and hath damage to the value of 40*l.* And therefore he bringeth suit, &c.

And the said *M.* by *F. R.* her attorney, *Plea.* cometh and defendeth the force and injury *Testator as-* when, &c. And saith that the said *H. T.* *signed the term.* ought not to have or maintain his said action thereupon against her; because she saith, that after the making the said articles in the said declaration mentioned, the said *E. W.* in his life-time, by his certain writing sealed with his seal, made at the said parish of *St. Giles Cripplegate* in the county aforesaid, on the 21st day of *January* in the year of our Lord 1692, which the said *M.* bringeth *Profert.* here into court, for and in consideration of the sum of 18*l.* 5*s.* 6*d.* to the said *E.* in hand

hand paid by one *R. H.* bargained, sold and assigned to the said *R. H.* All his estate, right, title and property, claim and demand whatsoever, of, in, to or out of the said demised premisses, by force or virtue of the said written lease or instrument, or otherwise howsoever; *By virtue* whereof he the said *R.* afterwards, *to wit*, on the 1st day of *February* in the year of our Lord 1692, entered into the said demised premisses, so as aforesaid, bargained, sold and assigned to him with the appurtenances, and was, and still is possessed thereof. *And* the said *M.* further saith, that he the said *E. W.* in his life-time, afterwards, *to wit* on the 10th day of *February* in the year last aforesaid, at the parish aforesaid, in the county aforesaid, gave notice to the said *H.* of the said assignment so made to the said *H.* as aforesaid: *And* this the said *M.* is ready to verify. Wherefore she prayeth judgment, if the said *H.* ought to have or maintain his said action thereupon against her, &c.

Lessee entered.

Testator gave notice to Plaintiff.

The Plaintiff did not dare to go on, because the declaration should have been in the Detinet only, and not in the Debt and Detinet. Sed. Q.

Warwickshire, to wit, W. B. late of Ilmington in the county of W. aforesaid, yeoman, was summoned to answer R. H. of a plea, that he render to her 74 l. of good and lawful money of Great Britain, which he oweth her, and unjustly detaineth from, &c. And where-

Declaration in debt for rent on a lease parol.

whereupon the said *R.* by *R. S.* her attorney saith, that whereas she, on the 2d day of *December* in the 3d year of the reign of our lord the now king, at *Stratford* in the said county, did demise to the said *W.* one messuage and fifty acres of land, meadow and pasture with the appurtenances, in *Ilimington* in the county aforesaid; to have and to hold to him and his assigns, from the first day of *November* then last past, to the full end and term of one whole year from thence next ensuing, and fully to be compleat and ended, and so from year to year, as long as both parties shall please; yielding and paying therefore yearly, and every year, to the said *R.* the rent of 25*l.* on the first day of *May*, and the first day of *November*, by even and equal portions; the first payment to be made on the 1st day of *May* then next ensuing; by virtue of which said demise the said *W.* entered upon the said tenements, with the appurtenances, and enjoyed the same: And the sum of 74*l.* rent for three years, on the 1st day of *November* in the year of our Lord 1733, was due in arrear to the said *R.* and still is unpaid; whereby an action accrued to the said *R.* to demand and have of the said *W.* the said 74*l.* rent; yet the said *W.* though often requested, hath not rendered the said 74*l.* to the said *R.* but hath refused, and still doth refuse, to render the same to her, to the damage of the said *R.* of 10*l.* And thereof she bringeth suit, &c.

And the said *A. H.* saith, that he by any thing by the said *J.* above in pleading al-
 ledged

Replication,
that the defend-
ant being a

*servant of the
warden of the
Fleet, permitted
a prisoner
to escape.*

ledged ought not to be barred from having his said action thereupon against the said *J.* because he saith, that the said *T. F.* in his life-time, *to wit*, at the time of making the said writing obligatory, and also on the first day of *April* in the 7th year of the reign of *William III.* late king of *England*, &c. and before, was warden of the prison of the said late king, of the *Fleet*, *to wit*, at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of *Cheap*. And the said *J. T.* for the whole time aforesaid, *to wit*, on and before the said 1st day of *April*, and also at the time of making the said writing obligatory, was a servant under the said *T. F.* having and exercising the care and custody of the said prison and the prisoners thereto committed, *to wit*, at the parish and ward aforesaid; and that the said *T.* was so warden of the said prison, and the said *J.* as before said, had and exercised the care and custody of the said prison and the prisoners thereunto committed; and lately before the making the said writing obligatory, *to wit*, on the same 1st day of *April* before mentioned, at the parish and ward aforesaid, one *F. H.* gent. was a prisoner in the said prison of the *Fleet* in execution, at the suit of one *Sir A. H.* knt. for a certain debt of 1000*l.* 46*s.* for damages, and then and there without the licence, and against the proper will of the said *T. F.* and with the licence and permission of the said *J. T.* escaped out of the said prison; the said *Sir A.* being then no ways satisfied for the debt and damages aforesaid;
whereof

whereof the said J. at and before the time of making the said writing, had notice, *to wit*, at London aforesaid in the parish and ward aforesaid. And the said T. being so as aforesaid warden of the said prison, the said Sir A. H. knt. before the making the said writing obligatory, *to wit*, on the 12th day of April in the term of Easter in the 7th year of the reign of the said king, came into the court of the said late king, before Sir G. T. knt. and his companions, justices of the said king of the bench at Westminster, by H. C. then his attorney, and then exhibited to the said justices his certain bill against the said T. F. warden of the prison of the said late king, of the Fleet, then present in the same court in his proper person, of a plea of debt; by which said bill the said Sir A. then complained that the said T. unjustly detained, and did not render to the said Sir A. 1000*l.* 46*s.* which he owed him, for that, *to wit*, that *whereas* the said Sir A. heretofore, *to wit*, in the term of Easter in the 5th year of the reign of the said late king and the lady Mary the late queen, in the court of the said late king and queen, before the said late king and queen, the said court being then at Westminster in the county of M. by bill without the writ of the said late king and queen, and by the judgment of the same court, had recovered against the said F. H. gent. as well a certain debt of 1000*l.* as 46*s.* which in the same court were adjudged to the said Sir A. for his damages which he had sustained as well by occasion of

Bill filed against the warden for the escape, setting forth.

The judgment obtained against the prisoner in B. R.

His being committed in execution there ;

removed by Habeas Corpus ;

the detaining that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *F.* was convicted;

And the said *F. H.* afterwards, *to wit*, on Monday next after the morrow of the ascension of our Lord in the 6th year of the reign of the said late king and queen, then being present in his proper person in the said court of the said late king and queen before the said late king and queen at *Westminster* in the county of *M.* aforesaid, at the prayer of the said Sir *A.* was committed by the said court of the said late king and queen, before the said late king and queen there, to the custody of the marshal of the *Marshalsea* of the said late king and queen before the said late king and queen, in execution for the debt and damages aforesaid, at the suit of the said Sir *A.* there to remain until, &c. as by the record and proceedings as well of the said judgment as of the said commitment in execution, remaining in the said court of the said late king, before the said late king at *Westminster* aforesaid, more fully appeared. By virtue of which said commitment the said marshal of the said *Marshalsea* then and there received the said *F.* into his custody, and had and detained him in execution for the said debt and damages.

And the said *F.* being so in the custody of the marshal of the said *Marshalsea*, in execution for the said debt and damages in form aforesaid, afterwards, *to wit*, on the 24th day of *May* in the 6th year aforesaid, the said *F.* came in his proper person, being brought

brought under the custody of the said marshal of the *Marshalsea* aforesaid, by virtue of the writ of the said late king and queen of *Habeas Corpus* of the said *Francis*, directed to the said Marshal, issuing out of the court of the said late king and queen of the bench at *Westminster* aforesaid, before Sir *J. P.* knt. then one of the justices of the said late king and queen of the bench, at his chambers situated in *Serjeants-inn* in *Chancery-lane*, *London*; and the said marshal, *to wit*, *W. B.* esq; then and there returned to the said justice (amongst other things) that the said *F. H.* was charged in execution at the suit of the said Sir *A.* for the said 1000*l.* of debt, and 46*s.* for damages so as aforesaid recovered, the body of which said *F.* he then and there had ready, according to the tenor of the said writ: *Whereupon*, the said *F. H.* then and there was committed by the said justice to the prison of the said king and queen of the *Fleet* in execution for the said debt and damages, (amongst other things) there to remain until, &c. which said commitment the said justice afterwards, *to wit*, on the 8th day of *June* in the term of the holy *Trinity* in the 6th year aforesaid, by his own proper hands delivered unto the said court of the bench aforesaid, to be inrolled of record, and the same commitment was inrolled of record in the same court, as by the record of the said writ and the return thereof, and the commitment in execution last mentioned, remaining in the same court of the bench aforesaid, *to wit*, at *Westminster* aforesaid,

*committed to
the custody of
the warden.*

and permitted
to escape.

then more fully and plainly appeared; by virtue of which said commitment the said *T. F.* being warden of the said prison of the *Fleet*, on the said 24th day of *May* in the 6th year aforesaid, then and there, *to wit*, before the said justice at his chambers aforesaid situate in *Serjeants-Inn* aforesaid, took the said *F. H.* into his custody, and immediately led and put the said *F. H.* unto and in the said prison of the *Fleet*, then being at *London*, *to wit*, in the parish of *St. Bridget*, otherwise *St. Brides*, in the ward of *Par-rington without*, and then and there had and detained the said *F.* in the said prison in execution for the debt and damages aforesaid: And the said *F.* being so, as aforesaid, in the custody of the said *T.* in execution for the said debt and damages in form aforesaid, the said *T.* afterwards, *to wit*, on the 1st day of *April* in the 7th year of the reign of our said late lord king *William* the third, then being warden of the said prison of the said lord the king as aforesaid, had permitted the said *F.* to go at large freely and voluntarily where he would, and to escape out of the said prison and out of his custody, *to wit*, at *London* aforesaid, in the parish and ward aforesaid, the said *Sir A.* being then no ways satisfied for the said debt and damages or any parcel thereof; whereby an action had accrued to the said *Sir A.* to demand and have of the said *T.* the said 1002*l.* 6*s.* Yet the said *T.* although he had been often requested, had not then rendered the said 1002*l.* 6*s.* to the said *Sir A.* but had then intirely

intirely refused and then refused to render the same to him; wherefore the said Sir A. then said he had been injured and had damage to the value of 500*l.* and thereupon he then prayed remedy, &c. with this that he the said Sir A. would then verify that the said judgment then remained in its full force and strength, no ways revoked, reversed, annulled, vacated or satisfied, &c. and he then found pledges for prosecuting, *to wit*, John Doe and Richard Roe: Upon which said bill first mentioned in the said court of the said late king before the said justices of the said late king of the bench at *Westminster* such proceedings were then afterwards, *to wit*, in that same term of *Easter* in the said 7th year of the reign of the said late king, that the said Sir A. H. by the consideration of the same court, recovered against the said T. F. the said debt of 1002*l.* 6*s.* and his damages by occasion of the detaining the debt to 80*s.* adjudged by the said court of the said late king to the said Sir A. and that the said T. should be in mercy, &c. And the said Sir A. further saith, that after the said judgment in form aforesaid given, and after the making the said writing obligatory, *to wit*, on the 24th day of *May* in the said 7th year of the reign of the said late king, the said T. F. by the advice and at the request of the said J. T. for the reversing the said judgment, sued forth out of the chancery of the said late king, the same court being then here at *Westminster* in the county of *Middlesex*, a certain writ of the said late king for correct-
Judgment
against the
warden.
Removed by
writ of error.

ing errors in the said record and proceedings, and in giving the said judgment, directed to Sir G. T. knt. then chief justice, of the said late king of the bench, by which said writ the said late king commanded his said chief justice, that if judgment was given thereupon, that then he should send to the said late king distinctly and plainly under his seal the record and process of the said plaint, with all things touching the same and the said writ, so that the said late king might have them from the day of the holy *Trinity* in three weeks then next ensuing, whereforever he should then be in *England*, that inspecting the record and process aforesaid, he might cause further to be done thereupon for amending the said errors, as of right and according to the law and custom of his kingdom of *England* should be meet to be done; by virtue of which said writ for correcting errors, afterwards, at the said day of the return of the said writ, the said record and process of the said plaint, with all things touching the same, were in due manner sent and removed into the court of the said late king before the said late king, the said court then being at *Westminster* in the county of *Middlesex* aforesaid: Upon which such process was upon the said writ for correcting errors in the said court of the said late king before the said late king, that afterwards, to wit, in the term of *Easter* in the 8th year of the reign of the late king, it was considered by the said court of the said late king before the said late king, that the said judgment should

Affirmed in
B. R.

should stand in its full strength and effect, that the said judgment should be in all things affirmed, as by the record and proceſs of the said judgment remaining in the court of our said lady the present queen before the queen herself at *Westminster* more fully appeareth; which said judgment still remaineth in its full force and effect, no ways reversed, annulled or satisfied. And the said Sir A. further saith, that the said T. in his life-time, *Notice thereof to the dist.* to wit, within the space of two years next after the date of the said writing obligatory, and soon after the making the same, to wit, on the 21st day of *May* in the year of our Lord 1695, aforesaid, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap* aforesaid, gave notice to the said J. T. of the said action so as aforesaid prosecuted by the said Sir A. H. against the said T. and requested the said J. to indemnify the said T. therefrom; Yet the said J. T. within the space of two years next ensuing the date of the said writing obligatory, or at any time afterwards in the life-time of the said T. did not indemnify or save harmless the said T. F. from the said action so as aforesaid prosecuted by the said Sir A. H. knt. against the said T. And this he is ready to verify: Wherefore he prayeth judgment and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

Anthony Rack.
Wm. Kempe.

*Memorandum
of a bill.*

*Bill in debt
against the
warden of the
Fleet for the
escape of a
prisoner in exe-
cution.*

*Judgment in
debt against
the prisoner
in B. R.*

Be it remembered, that on the 23d day of *January* in this same term, *C. P.* by *J. B.* his attorney, came here into court and exhibited his certain bill against *T. F.* esq; warden of the prison of our lord the present king of the *Fleet*, present here in court in his proper person, of a plea of debt, the tenor of which said bill follows in these words: *To* the justices of our lord the king of the bench, *Middlesex*, *to wit*, *C. P.* by *J. B.* his attorney complaineth of *T. F.* esq; warden of the prison of our lord the king of the *Fleet*, present here in court in his proper person, for that, that he has not rendered to the said *C.* 151*l.* 3*s.* of lawful money which he oweth him, and unjustly detaineth, for that, *to wit*, that *whereas* the said *C.* heretofore, *to wit*, in the term of *Easter* in the 4th year of the reign of our lord the now king and lady *Mary* late queen of *England*, in the court of our said lord the king and lady the late queen, before the said king and late queen, the said court then being at *Westminster* in the county of *Middlesex*, by the judgment of the said court recovered against *M. G.* otherwise called *M. G.* of *London*, gent. 150*l.* of debt, and also 23*s.* for his damages which he sustained, as well by occasion of the detaining that debt, as for his cost and charges by him about his suit in that behalf expended, whereof the said *M.* was convicted, as by the record thereof now remaining in the court of our said lord the present king before the king himself at *Westminster* aforesaid more fully appears; which
said

said debt and damages in the whole amount
 to the said 15 l. 3 s. And afterwards, to *The prisoner*
vit, on Monday next after the octave of the committed in
 purification of the blessed Mary in the term execution;
 of Hilary in the 4th and 5th years of the
 reign of our said lord the king and lady the
 late queen, in the said court of our said lord
 the king and lady the late queen before the
 said king and late queen at *Westminster* afore-
 said, the said C. came in his proper person,
 and the said M. then present in the same
 court, and being then in the said court, at
 the prayer of the said C. was in due manner
 committed by the court to W. B. esq; then
 marshal of the *Marshalsea* of our said lord
 the king and lady the late queen, before our
 said lord the king and lady the late queen at
Westminster, in execution, at the suit of the
 said C. for the debt and damages afore-
 said, there to remain until, &c. as by the record
 and proceedings thereupon remaining in the
 said court of our said lord the king before
 the king himself at *Westminster* more fully
 appeareth; by virtue of which said commit-
 ment the said W. B. then and still marshal
 of the *Marshalsea* afore-
 said, took the said M.
 into his custody in execution for the said debt
 and damages, and had detained and kept the
 said M. in execution for the debt and da-
 mages afore-
 said: And the said M. being as removed by
 afore-
 said in the custody of the marshal of the Habeas Cor-
 pus;
Marshalsea afore-
 said, in execution for the said
 debt and damages, afterwards to wit, on
 the 7th day of July in the 5th year of the
 reign of our said lord the king and lady the
 late

committed to
the custody of
the defendant.

late queen, the said *M.* being so as aforesaid in execution for the said debt and damages, by virtue of the writ of our said lord the king and lady the late queen of *Habeas corpus cum causa*, in due manner issuing out of the court of our said lord the king and lady the late queen of the bench here, and directed to the said marshal of the *Marshalsea* of our said lord the king and lady the late queen, before the said lord the king and lady the late queen was brought and had with the said cause aforesaid, by the marshal of the *Marshalsea*, aforesaid, charged in execution with the cause aforesaid, before *J. B.* then being one of the justices of our lord the king and lady the late queen of the bench here, at the parish of *St. Clement Danes*: And thereupon the said *M.* then and there, to wit, on the said 7th day of *July* in the 5th year aforesaid, at the said parish of *St. Clement Danes* aforesaid, was in due manner committed by the said *J. P.* then one of the justices of our said lord the king and lady the late queen of the bench here as aforesaid, to the custody of the said *T. F.* then and yet warden of the prison of the *Fleet* aforesaid, charged in execution for the debt and damages aforesaid, as by the record and proceedings thereupon remaining in the said court of the bench here more fully appeareth; by virtue of which said commitment the said *T. F.* then being warden of the said prison of the *Fleet*, then and there had and detained the said *M.* in his custody, in execution for the debt and damage aforesaid;

said; The said T. F. then and still being warden of the said prison of the Fleet, afterwards, *to wit*, on the 23d day of November in the 6th year of the reign of our said lord the king and lady the late queen, at the said parish of St. Clement Danes, well knowing the premisses, no ways regarding the duty of his office, but contriving and fraudulently intending to cause the said debt and damages to be wholly lost, against the will and without the licence and notice of the said C. the said C. being no ways satisfied for the said debt and damages, or any parcel thereof, then and there permitted the said M. to go at large where he would, and to escape out of the custody of the said T. F. then and yet being warden of the said prison of the Fleet, and out of the said execution; whereby an action accrued to the said C. to demand and have of the said T. F. the said 151*l.* 3*s.* Yet the said T. F. hath not yet rendered the said 151*l.* 3*s.* to the said C. but hath intirely refused to render the same to him. Wherefore he saith he is injured, and has damage to the value of 20*l.* And thereupon he prayeth remedy, &c. Pledges for prosecuting J. D. and R. R.

Actio accrevit.

And the said T. F. in his proper person cometh and defendeth the force and injury when, &c. And saith, that the said declaration, and the matter therein contained, are not sufficient in law for the said T. to have and maintain his said declaration against the said T. And that he the said T. hath no need, and is not bound by the law of the land

Demurrer to the bill.
Salk. 753.

land in any manner to answer to the said declaration made in manner and form aforesaid; and this he is ready to verify: Wherefore for default of a sufficient declaration, the said T. prayeth judgment, and that the said C. may be barred from having his action thereupon against the said T.

Joinder.

And the said C. for that he hath in his said declaration above declared sufficient matter in law, to have and maintain his said action against the said T. which he is ready to verify; which said matter the said T. doth not deny, nor any ways answer thereto, but intirely refuseth to admit the verifying the same, as before, prayeth judgment, and his said debt, together with his damages, by occasion of the detaining that debt, to be adjudged to him, &c.

*Continuance
by Cur' advise-
sar'.*

And because the justices here would advise themselves of and upon the premisses, before they give their judgment thereupon, day is given unto the said parties here, until *Wednesday* next after 15 days of *Easter*, to hear their judgment thereupon, for that the said justices here are not yet, &c.

*Judgment for
the plaintiff.*

At which day here came as well the said C. by his attorney aforesaid, as the said T. in his proper person, and hereupon the premisses being seen and fully understood by the justices here, it seemeth to the said justices here, that the declaration and matter therein contained are sufficient in law for the said C. to have and maintain his said action against the said T. as the said C. hath above alledged. *Therefore* it is considered, that the said C. recover against the said

said T. his said debt, and his damages by occasion of the detaining that debt, to 100s. adjudged by the court here to the said G. by his assent. And the said T. in mercy &c.

And now at this day, to wit, on the 15th day of June in Trinity term in the 14th year of the reign of our said sovereign lord George the third, come the said bailiffs and citizens of the said city of *Litchfield* by the said R. M. their attorney, and say, that the said writing obligatory in the said bill of the said bailiffs and citizens exhibited against the said *Edward Tart*, was under this condition, That if one *Thomas Tart*, his executors, administrators or assigns, did well and truly observe, perform, fulfil, accomplish, pay, and keep all and singular the covenants, grants, articles, clauses, provisos, payments, conditions and agreements whatsoever, which on the part and behalf of the said T. T. his heirs, executors, administrators or assigns, were or ought to be observed, performed, fulfilled, accomplished, paid and kept, comprised or mentioned in one indenture of lease bearing date with the said writing obligatory, and made or expressed to be made between *Luke Robinson*, gent. and *Edward Holmes*, gent. bailiffs of the said city of *Litchfield*, and their brethren the citizens of the said city, of the one part, and the said T. T. of the other part, in all things according to the true intent and meaning of the same; then the said writing obligatory was to be void and of none effect, or else should

Suggestion, after final judgment in debt on a bond, that the bond was upon condition for performance of covenants pursuant to the stat. 8. c. Scaccario. The condition of the bond for performance of covenants in indenture.

be

The indenture.

Profert of the indenture.

be and remain in full force, power and virtue. And that the said indenture in the said condition mentioned was made on the said 18th day of *March* in the year of our Lord 1776. between the said *Luke Robinson* and *Edward Holmes* then bailiffs of the said city of *L.* and their brethren the citizens of the said city, of the one part, and the said *T. T.* in the said condition mentioned by the name of *T. T. of B.* in the county of *W.* tiremaker, of the other part; which other part of the said indenture sealed with the seal of the said *T. T.* the said bailiffs and citizens of the said city of *L.* bring here into court, the date whereof is the same day and year last mentioned, whereby the said *L. R.* and *E. H.* the said bailiffs and their brethren the citizens of the said city, for and in consideration of the rents, covenants and agreements therein after mentioned, expressed and reserved, and on the part and behalf of the said *T. T.* his executors, administrators and assigns, to be paid, done and performed, did with one assent, consent, and agreement for them and their successors, bailiffs and citizens of the said city, demise, lease, set and to farm let unto the said *T. T.* his executors, administrators and assigns, all those their water corn-mills set, situate, standing and being in or near *Stowe-street* in the said city of *L.* called *Stowe-mills*, and all houses, buildings, ways, waters, pools, ponds, dams, and flood-gates to the said mills, or any of them belonging, with all and every of their appurtenances, and all, and all manner of going and

and running-geer belonging to and used with the said mills; and also all and all manner of goods and chattels, utensils, implements and tools whatsoever of them the said bailiffs and citizens then standing, remaining or being in, at, or belonging to the said mills, and which the then tenants of were obliged to leave there; and that little piece of building then lately used as a walk-mill, but then demolished and plucked down, with the land whereon the said building stood. And also all that the piscary or fishing in the *Nether-pool*, otherwise called *Stowe-pool*, adjoining to the said mill; and all that the said pool called *Nether-pool* or *Stowe-pool*, as the same was then meared, bounded and staked out, with liberty also of landing the nets on the waste lands belonging to the said bailiffs and citizens gained out of the said pool, which were not then in lease to any other persons, and all privileges and advantages to and with the said pool, piscary, and fishing usually enjoyed, and all houses, outhouses, edifices, buildings, ways, waters, water-courses, pools, ponds, dams, streams, flood-gates, easements, commons, profits, commodities, advantages, hereditaments and appurtenances whatsoever to the premisses aforesaid belonging or in any wise appertaining, or accepted, reputed, deemed, taken or known as part, parcel, or member thereof, with free liberty also to and for the said T. his executors, administrators and assigns to pull down the said mill, and to apply the materials thereof, utensils and geering there-
to

to belonging, as he or they should think proper; he or they erecting or building in the same place another good and substantial mill with fit and proper wheels and appurtenances as therein after mentioned. Except and always reserved out of that demise unto the said bailiffs and citizens, their successors and assigns, all such waste grounds or lands gained out of the said pool as was not staked and set

Habendum. out as aforesaid: *To have* and to hold the said mills, pools, fishery and premises thereby demised, or so intended to be (except before excepted) with their and every of their appurtenances unto the said T. T. his executors, administrators and assigns from the 24th day of *June* next ensuing the date of the said indenture, for and during and unto the full end and term of 31 years from thenceforth next ensuing, fully to be com-

Reddendum. plete and ended; *Yielding* and paying therefore yearly and every year, during the first six years of the said demised term, unto the said bailiffs and citizens, their successors and assigns, the rent or sum of 5*l.* of lawful money of *Great Britain*, upon two of the most usual feast-days or days of payment in the year, by even and equal portions without any deduction or abatement whatsoever (except only for the land-tax, and also yielding and paying yearly and every year unto the said bailiffs and citizens, their successors and assigns, during the last 25 years of the said demised term, the rent or sum of 30*l.* of like lawful money upon the same feast-days and times of payment, without any deducti-

on or abatement whatsoever (except only for the land-tax, which the said bailiffs and citizens were to pay and discharge.) *And the* *Covenants.*
 said T. T. for himself, his executors, administrators and assigns, and every of them, did covenant, promise and grant to and with the said bailiffs and citizens and their successors and assigns by the said indenture, that he the said T. T. his executors, administrators or assigns, or some of them, should and would yearly and every year during the said demised term, well and truly pay, or cause to be paid unto the said bailiffs and citizens, their successors and assigns, the said yearly reserved rents of five pounds, and thirty pounds of lawful money of *Great Britain*, upon the respective days and times, and in manner and form above limited and appointed for payment thereof, without any deduction, defalcation or abatement whatsoever (except only for the land-tax); *And* also that he the said T. T. his executors, administrators or assigns, should and would, within the space of six years from the day of the date of the said indenture, erect and build, or cause to be erected and built, a good set of mills at and upon the same place where the said demised mills then stood, and should and would expend and lay out in building the same the sum of 350*l.* and should and would make such mills good, firm and substantial, with proper wheels, gates, utensils and other appurtenances fit for carrying on some sort of iron manufactory, and should and would during the said term repair, up-
 VOL. II. U hold,

1st Breach.

hold, maintain and keep not only the said mills so to be erected and built, but also the floodgates, waftes, bridges and dams belonging to the said mills and pool, with all needful and necessary reparations, as by the said indenture amongst other things more fully appears. And the said bailiffs and citizens of the city of *L.* in fact say, that before the feast of the nativity of our Lord in the year of our Lord 1769, the said *T.* died, that is to say, at *London*, in the parish of *St. Mary le Bow* in the ward of *Cheap*, and that at the said feast of the nativity of our Lord in that year the sum of 135*l.* of the rent of 30*l.* aforesaid, for four years and an half ending at that feast in that year, were in arrear from the executors of the last will and testament of the said *T. T.* to the said bailiffs and citizens of the said city of *L. to wit*, at *London* aforesaid, in the parish and ward aforesaid; and the same still remains due and unpaid, contrary to the form and effect of the said covenant of the said *T. T.* so made in that respect. And the said bailiffs and citizens of the said city of *L.* further say, that although the said *T. T.* in the said indenture mentioned, within six years next after the making of the said indenture, did erect and build a set of mills at or upon the same place where the said demised mills at the time of the making the said demise stood; yet the said *T. T.* did not cause the same to be well built, neither did the said *T. T.* expend or lay out in building the same the sum of 350*l.* nor any sum of money exceeding

2^d Breach.

exceeding the sum of 100*l.* nor were the same set of mills made good, firm and substantial, with wheels, gates, utensils, and other appurtenances fit for carrying on any sort of iron manufactory; nor did the said *T. T.* in his life-time, or any other person whatsoever, for the space of six years now last past, repair, uphold, maintain or keep the said new erected mills, or any of them, or any of the floodgates, wailes, bridges, and dams belonging thereto, and pool, or any of them, but on the contrary thereof permitted and suffered the said mills, and the said floodgates, wailes, bridges, and dams to be broken down, ruinous and in great decay for want of needful and necessary reparations, and the same still remain broken down, ruinous and in great decay, that is to say, at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of *Cheap* aforesaid; and this the said bailiffs and citizens of the city of *L.* are ready to verify; and pray judgment, and their damages by reason of the said breaches of covenant, to be adjudged to them. *Therefore* it is considered by *Judgments* the barons here, that the said bailiffs and citizens ought to recover their damages on occasion of the premisses, against the said *E. T.* But because it is unknown what damages the said bailiffs and citizens have sustained by reason of the said breaches of covenant; *Therefore*, according to the form of *Writ of Inquiry* the statute in such case lately made and provided, the sheriffs of *London* are commanded that they cause to come before Sir *Tho-*

mas Parker, knt. chief baron of the exchequer of our lord the king, on next after *at Guild hall* in the city of *London*, twelve free and lawful men of their bailiwick, to inquire of the truth of the premisses by the said bailiffs and citizens above suggested; and to assess what damages the said bailiffs and citizens have sustained by reason of the breaches of covenant aforesaid; and that they should have on that day before the said chief baron the writ of the said lord the king, to them directed for that purpose. *It is likewise* commanded to the said chief baron, that he certify the inquisition before him taken to the barons of the exchequer at *Westminster*, from the day of *St. Michael* in three weeks next coming, together with that writ. And the same day is given to the said bailiffs and citizens here, *&c.*

Easter 13 Geo. 3.

*Declaration in
debt by baron
and feme, on
a bond to the
feme &c. &c.
sole.*

Nottinghamshire, *D. B.* late of *to wit,* in the said county of otherwise called *D. B.* of in the county of was summoned to answer *J. R.* and *M.* his wife, (lately called *M. M.*) of a plea, that he render to them thirty-two pounds of lawful money of *Great Britain*, which he owes and unjustly detains from them, *&c.* And whereupon the said *J.* and *M.* by their attorney complain, That whereas the said *D.* on

on the first day of *May* in the year of our Lord 1736, at *Mansfield* in the said county of *Nottingham*, by his certain writing obligatory, sealed with the seal of him the said *D.* acknowledged himself to be held and firmly bound unto the said *M.* whilst she was sole, by the name of *M. M. of B.* in the county aforesaid, victualler and grocer, in the aforesaid thirty-two pounds of good and lawful money of *Great Britain*, to be paid to the said *M. M.* her heirs, executors, administrators or assigns, or any of them, when he should be afterwards thereto required: *Nevertheless* the said *D.* the aforesaid thirty-two pounds, or any part thereof, to the said *M.* whilst she was sole*, or to them the said *J.* and *M.* after the marriage between them celebrated, hath not rendered (altho' often thereto requested) but hath wholly refused and still doth refuse to render the same to the said *J.* and *M.* to the damage of them the said *J.* and *M.* of forty pounds; and thereupon they bring this suit. *And* the aforesaid *J.* and *M.* bring here into court the aforesaid writing obligatory of the said *D.* which testifies the debt aforesaid in form aforesaid, the date whereof is the day and year abovesaid. *Brach.* *Profert.*

* *Treby*, Ch. J. *A.* brought an action of debt in right of his wife due to her before coverture, and he said that the debt was not paid to the wife, but he did not say that it was not paid to him *post disponsalia*; and upon demurrer it was adjudged ill, though it had been good after a verdict. 1 *R. Raym.* 284. *Vide* 1 *Vent.* 119.

Trin. 13 & 14 Geo. 3.

Debt on a bond by the executrix of the obligee against the brother and heir of the obligor. London, *J.* S. late of the town of *Hertford* to wit, *J.* in the county of *Hertford*, gent. brother and * heir of *H. S.* late of the island of *Jamaica*, esq; deceased, otherwise lately called *H. S. nunc in London sed de insula Jamaica Armiger*, was summoned to answer *S. F.* widow, executrix of the last will and testament of *J. P.* late of *London*, merchant, deceased, of a plea, that he render to her 433*0*l. which he unjustly + detains, &c. And whereupon the said *S.* by *J. S.* her attorney says, that whereas the said *H.* brother of the said *J.* whose heir he is, in his life time, to wit, on the fifth day of *November* in the year of our Lord one thousand seven hundred and twenty-five, at *London*,

* A man seised of lands in gavelkind, having issue three sons, by obligation binds himself and his heirs, and dies; debt lies against all the three sons. 11 *H.* 7. 12. 11 *E.* 3. ut. *Debt.* 7. *Dyer* 5 *El.* 238. 1 *Inst.* 376 *b.*

A man seised of lands *ex parte materna* by obligation binds himself and his heirs, and dies; debt lies against the heir *ex parte materna*, without naming the heir at common law. 11 *H.* 7. 12. 1 *Inst.* 376. *b.*

+ Debt against an heir in the *detinet* only, held bad after verdict. *Pasib.* 16 *Car.* 2. *B. R.* *Goodwyn v. Newton.* *Lev.* 130. Held to be cured by the *Oxford* act, being after verdict. *Mitch.* 19 *Car.* 2. *B. R.* *Combers v. Walton.* *Lev.* 224.

to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, by his writing obligatory, acknowledged himself to be bound to the said *J.* in his life-time in the said four thousand three hundred and thirty pounds, to be paid to the said *J.* when he should be thereunto required; and to which payment, well and faithfully to be made, he bound himself and his * heirs by the said writing: Yet the said *H.* in his life-time, and the said *J.* brother and heir of the said *H.* although often required, have not, nor hath either of them, paid the said four thousand three hundred and thirty pounds to the said *J.* in his life-time, or to the said *S.* after the death of the said *J.* but resoleth to pay the same to the said *J.* in his life-time, and to the said *S.* after his death; and the said *J.* still refuses to pay the same to the said *S.* and unjustly detains in delay of the faithful execution of the said testament: Wherefore she says she is injured, and hath damage to the value of twenty pounds: and thereupon she brings suit, &c. And the said *S.* brings here into court as well the said writing which testifies the said debt in form aforesaid, whose date is the same day and year aforesaid, as the letters testamentary of the said *J.* whereby it

Breath.

Profert of the bond.

And probate.

* *Hæres non tenetur in Anglia ad delicta antecessoris reddenda, nisi per antecessorem ad hoc fuerit obligatus; præterquam debita regis tantum.* Fleta, lib. 2. c. 55. Briton 65. b. 11 H. 6. 48.

appears to the court here, that the said *S.* is executrix of the last will and testament of the said *J.* and thereof has the administration, &c.

Plea, riens per descent tempore impetrationis brevis originalis.

Stat. 3 & 4
W. & M. c.
14.
5 Mod. 122.
Redhaw and
Hester.
Jeffry and
Bartow. Pas.
10 Ann.
10 Mod. 18.

And the said *J.* by *T. S.* his attorney, comes and defends the wrong and injury when, &c. and says, that he ought not to be charged with the debt aforesaid as brother and heir of the said *H.* by virtue of the said writing, because protesting that the writing aforesaid is not the deed of the said *H.* and for plea saith, that he hath not any lands or tenements by descent as heir to the said *H.* in fee-simple, nor had on the day of obtaining the original writ of the said *S.* nor at any time since; and this he is ready to verify: Wherefore he prays judgment, if he ought to be charged with the debt aforesaid as brother and heir of the said *H.* by virtue of the writing aforesaid.

Geo. Wilson.

Replication, qu'il ad asseis.

And the said *S.* saith, that by any thing by the said *J.* above in pleading alleged, she ought not to be precluded from having her said action against him; because she says, that before the day of obtaining her said original writ, *to wit*, on the third day of *April* in the thirteenth year of the reign of our said lord the now king, the said *J.* had sufficient lands and tenements by descent as heir to the said *H.* in fee-simple, whereout he might have satisfied the said *S.* the debt and damages aforesaid, *to wit*, at *London* aforesaid in the parish and ward aforesaid;

said; and this she is ready to verify: Wherefore she prays judgment, and that the said debt, together with the damages by means of the detention of the said debt, may be adjudged unto her, &c.

John Glynn.

And the said J. saith, that before the day *Rejoinder.* of obtaining the said original writ of the said S. he had not sufficient lands and tenements by descent, as hear to the said H. in fee-simple, whereout he might have satisfied the said S. the debt and damages aforesaid, or any part thereof, as the said S. hath in replying above alledged; and of this he puts himself on the country, &c. And the said *Issue.* J. doth so likewise, &c.

Surrey, to wit, J. A. late of the parish of *Debt on bond* St. Andrew, Holborn, in the county of *by the executor* Middlesex, merchant, and J. his wife, and *of the obligee* A. M. late of the same parish, in the county *against the* aforesaid, gent. and E. his wife, and E. B. *heirs and devisees of the* late of Guildford, in the county of Surrey, *obligor.* widow, which said J. E. and E. and one *Lil. Ent.* A. C. now deceased, whom the said J. E. *529.* and E. have survived, were daughters and co-heiresses of C. C. otherwise lately called C. C. of Crawley in the county of Surrey, gent. and devisees of divers lands and tenements, of which the said C. died seised in his demesne of fee, R. R. late of in the county of *Sussex*, T. B. late of in the county of *Sussex*, yeoman, and J. M. late of Cranley in the county of *Sussex*, yeoman, surviving devisees of a manor, and of divers

divers lands and tenements whereof the said C. died seised, by the said C. by his last will devised to the said R. B. T. B. and J. M. and to one R. H. late of *Hafcombe* in the county of *Suffex*, and now deceased, and whom the said R. T. and J. survived, were summoned to answer H. T. executor of the testament of J. T. of a plea, that they render to him sixty pounds, which they unjustly detain from him, &c. And whereupon the said H. by J. C. his attorney, says, that whereas the said C. father of the said J. E. A. and E. whose surviving heirs and devisees they the said J. E. and E. are in the life-time of the said C. to wit, on the twenty-ninth day of *September* in the fourth year of the reign of his late majesty *James* the second, late king of *England*, &c. at *Guildford* in the county of *Surrey*, by his writing obligatory, sealed with the seal of the said H. and to the court of our said lord the now king here shewn, the date whereof is on the day and year aforesaid, acknowledged himself to be bound to the said J. H. in his life-time in the said sixty pounds, to be paid to him when he should be thereunto required; and to the said payment well and truly to be made the said C. in his life-time bound himself and his heirs by the said writing: *And whereas* the said C. was in his life-time seised in his demesne as of fee, of and in the manor and several tenements and premisses, with the appurtenances, in the said county here after particularly mentioned to be devised; *Made his will. And* being so seised thereof the said C. after the

the twenty-fifth day of *March* in the year of our Lord one thousand six hundred and ninety-two, *to wit*, on the eleventh day of *January* in the year of our Lord one thousand six hundred and ninety-four, at *Guildford* afore-
 said, made his testament in writing; *And by* *Devised to do the same testament gave and bequeathed to* *the said R. H. now deceased, R. B. T. B. and J. M. and their heirs, the manor, messuage or tenement, farm, lands, meadow, pasture, feeding, woods, rents, tenements, and hereditaments whatsoever, with the appurtenances, called or known by the name of Wood-*
ham, situate within the parish of Chertsey in the said county of Surrey; and by his said testament gave and bequeathed to the said R. H. R. B. T. B. and J. M. and their heirs, one messuage and divers lands with the ap-
purtenances, known by the name of Stubbs, parcel of New Park in Cranley in the county of Surrey afore-
 said; and also by his said tes-
 tament gave and bequeathed to the said *E. E. A. and J. their heirs and assigns, one messuage, and divers lands and hereditaments called New Park in Cranley* afore-
 said; *And* *Obligor dies:* *afterwards, to wit, on the first day of March*
in the year of our Lord one thousand six hundred and ninety-four afore-
 said, at *Guild-*
ford afore-
 said, died seised of such his estate
 of and in the manor, messuages, lands and
 tenements afore-
 said, with the appurtenances,
 so as afore-
 said respectively devised; *After* *Defendants*
 whose death, and before the day of suing *agree to the*
 out the original writ of the said *H. to wit, on* *legacies;*
 the same day and year last mentioned, at

Guilford aforesaid, the said *J. E. A.* and *E. R. H. R. B. T. B.* and *J. M.* agreed to their said legacies so as aforesaid respectively *And are seized,* devised to them, and were respectively seized &c.

Breach.

of the manor, messuages, lands and tenements aforesaid so devised to them as aforesaid, by virtue of the several devises aforesaid: *Yet* the said *C.* in his life-time, or the said *J. E. A.* and *E.* in the life-time of the said *A.* or the said *R. H. R. B. T. B.* and *J. M.* in the life-time of the said *R. H.* or the said *J. E. E. R. B. T. B.* and *J. M.* after the several deaths of the said *C. A.* and *R. H.* although often required, have not rendered, nor has any one of them rendered the said sixty pounds to the said *J. H.* in his life-time, or to the said *H.* after his death, but intirely refuseth to render the same to the said *J. H.* in his life-time, and to the said *H.* after his death; and the said *J. E.* and *E. R. B. T. B.* and *J. M.* after the several deaths of the said *C. A.* and *R. H.* have hitherto intirely refused to render the same to the said *H.* after the death of the said *J. H.* and still do refuse, and unjustly detain the same: Wherefore he says that he is injured, and has damage to the value of twenty pounds: And thereupon he brings suit, &c. *And* the said *H.* brings here into court as well the said writing which testifies the said debt in form aforesaid, the date whereof is on the said, &c. As also the said letters testamentary of the said *J. H.* by which it sufficiently appears to the court that the said *H.* is the executor

Profer of the bond;

And probate.

cutor of the said testament of the said *J. H.*
and thereof has administration, &c.

Kent, *J. A.* late of in the Declaration in
to wit, *J.* said county, yeoman, was sum- debt on the
moned to answer *F. P.* of a plea, that he sta. ute of 2 &
render to him nine pounds eighteen shillings 3 Ed. 6. c.
and nine-pence of lawful money of *Great* 13. for not
Britain, which he owes to him and unjustly setting forth
detains, &c. And whereupon the said *F.* tithe of Syl-
by va cædua.
his attorney says, that Lil. Ent. 148.
whereas the said *F.* now is, and for divers,
to wit, three years and more last past, was
vicar of the vicarage of the parish church of
G. in the said county of *Kent*. And whereas
the said *J.* now, and during all the time last
mentioned was possessor and occupier of a
large quantity, *to wit*, five acres of wood-
land, with the appurtenances, lying and be-
ing in the parish of *G.* aforesaid, and with-
in the bounds, limits and tithable places of
that parish. And whereas the tithe of all
wood being *sylva cædua*, and under the age
or growth of twenty years, arising or com-
ing on or from the said five acres of wood-
land, with the appurtenances, cut down for
sale thereof within forty years next before the
fourth day of *November* in the second year
of the reign of the late king *Edward* the VI.
and on the same day and year last mention-
ed, was of right due and payable to the vi-
car of the vicarage aforesaid, or to his far-
mer for the time being, in its proper kind
and.

and species: And whereas the said *J.* being so possessed of the said five acres of wood-land as aforesaid, and being the occupier thereof; and the said *F.* being vicar of the said vicarage; he the said *J.* within the space of three years now last past, cut down great quantities of wood there growing upon the said five acres of wood-land, and being *sylva cadua*, and under the age of twenty years, for sale thereof, the tithe of which said wood so growing on the said five acres of wood-land as aforesaid, and cut down for sale thereof, did of right belong, and was due and payable to the said *F.* as being vicar of the said vicarage, in its proper kind and species, and of right ought to have been rendered and paid to him: Nevertheless the said *J.* being a subject of this kingdom, and all and singular the premisses well knowing, after the cutting down of the said wood being *sylva cadua*, and under the age or growth of twenty years, for sale as aforesaid, that is to say, on the first day of *May* in the year of our Lord 1740, took and carried away the said wood from the places where the same was so cut down, and where the same ought to have been tithed, the tenth part thereof not being separated, divided or set out by the said *J.* from the nine parts residue thereof, nor any agreement or composition made by the said *J.* with the said *F.* for the tithe thereof, contrary to the form of the statute in that case made and provided. And the said *F.* avers, that the tenth part of the said wood,

wood, from the other nine parts residue thereof so as aforesaid not divided or set out, and by him the said *J.* so as aforesaid taken and carried away, at the time of taking and carrying away thereof was of the value of three pounds six shillings and three pence of lawful money of this kingdom; by reason whereof an action hath accrued to the said *F.* to require and have from the said *J.* the sum of nine pounds eighteen shillings and nine pence, that is to say, treble the value of the tithe of the said wood by the said *J.* not separated, divided or set out from the nine parts residue thereof, and contrary to the form of the said statute taken and carried away: *Nevertheless* the said *J.* although often required, the aforesaid nine pounds eighteen shillings and nine pence to the said *F.* hath not rendered, but the same to him to render hath hitherto refused, and doth yet refuse, to the damage of the said *F.* of ten pounds; and thereof he brings suit, &c.

Demurrer.

AND the said *J. L.* saith, that the countenance of the said *J. C.* of the taking of the cattle, goods and chattels aforesaid of him the said *J. L.* in the said place in which, &c. as bailiffs of the said *T. D.* and the matter therein contained, are insufficient in law to maintain him the said *J. C.* to acknowledge the taking of the said cattle, goods and chattels in the said place in which, &c. to be

*Demurrer to a
refusance in
replevin.*

Causes of demurrer.

be just, and that he the said *J. L.* needeth not, neither by the law of the land is he bound to answer to the said conufance in manner and form aforefaid made and pleaded; and this he is ready to verify: Wherefore for default of a fufficient conufance in this behalf, he the said *J. L.* prayeth judgment, and his damages, by means of the taking and unjust detention of the faid cattle, goods and chattels, to be adjudged unto him, &c. And for causes of demurrer in law upon the faid conufance, he the said *J. L.* according to the form of the ftatute in fuch cafe lately made and provided, fheweth to the court here the following causes, *to wit*, that the faid *J. C.* in and by his faid conufance hath not averred or fhewn, that the faid yearly rent of 4*l.* or any part thereof, was due and in arrear at the time in which the faid cattle, goods and chattels were fo taken as aforefaid; and for that the faid *J. C.* in and by his faid conufance hath not averred or fhewn that *E. J.* in the faid conufance named, is dead; and for that the faid conufance is uncertain and wanteth form, &c.

J. Foster.

Demurrer to evidence at Nifi prius.

And the jurors of the jury, whereof mention is within made, being demanded, alfo came, who to fpeak the truth of the within contained were chofen, tried and sworn; upon which the faid *A.* by one *L. P.* ferjeant at law, then of the council of the faid *A.* in maintenance of the iffue within joined, before

fore the said justices of assize shewed in evidence to the said jurors, and said that, &c.

And the said S. by one R. B. then of his council saith, that the evidence and allegations aforesaid, above-alledged on the behalf of the said A. are not sufficient in law to maintain the said issue, to which he hath no need, nor is he bound by the law of the land to answer. Wherefore for default of sufficient evidence in this behalf, he prayeth that the said jurors may be discharged from giving their verdict in the premisses; and that the said A. may be precluded from having his said action against him the said S. &c.

And the said A. for that he hath shewn sufficient matter in maintenance of the said issue in evidence to the said jurors, which matter the said S. doth not deny, nor in any manner answer thereto, prayeth judgment, and that the said jurors thereof may be discharged; and that the said S. may be convicted of the premisses, &c. *Whereupon Jurors discharged.* And day is thereupon given to the said parties before the justices *Day in C. B.* within written at *Westminster*, from the morrow of *All Souls* within written, to hear their judgment thereupon, &c.

And the said R. D. by T. C. his attorney cometh and defendeth the force and injury when, &c. and craveth oyer of the said writ of our lord the king of privilege; and it is read to him in these words, *to wit, George III.* &c. Witness, &c. Which being read and heard, the said R. prayeth judgment of the

writ and declaration of him the said *W. O. B.* aforesaid ; because he saith, that the said writ and declaration thereupon aforesaid in manner and form aforesaid made and declared, and the matter in them contained, are not sufficient in the law for the said *W.* his action aforesaid against him the said *R.* to have and maintain, to which said writ and declaration in manner and form aforesaid made and declared, he hath no need, nor by the law of the realm is held or obliged in any manner to answer ; and this he is ready to verify : Wherefore for want of a sufficient writ and declaration in this behalf, the said *R.* prayeth judgment, and that the said *W.* from his action aforesaid may be debarred, &c. And for causes of demurrer in law in this behalf, he the said *R.* according to the form of the statutes in such like cases made and provided, sheweth to the court these following, that is to say, for this, that it appeareth to the court that the same writ of our said lord the king of privilege was had and sued out upon the said 3d day of *July* in the 8th year of the reign of our said lord the king ; which day of suing out thereof was before the day on which the said *W.* has in his said declaration thereupon alledged and declared, that the trespasses, assaults, batteries, woundings and imprisonments, charged upon him the said *R.* in and by the said declaration, were done and committed ; and also for this, that between the said writ and declaration are diverse variances ; and also for this, that the said declaration in form aforesaid made

Causes of demurrer.

Writ tested before the cause of action laid in the declaration.

and declared, is in itself repugnant, insensible, contradictory, and wanteth form, &c. And hereupon the said *R. D.* demandeth the *Judgement for the defendant for default of the plaintiff's joining in demurrer.* the said *W. O. B.* to join in demurrer with him the said *R.* And hereupon a day is given by the court of our said lord the king of the bench here to the said *W.* before his majesty's justices at *Westminster*, until — next after — to join in the said demurrer in law with the said *R.* And the said *W.* at the same day being solemnly required came not, neither is his writ of our said lord the king of privilege aforesaid against the said *R.* further prosecuted, but made default. *Therefore* it is considered, that the said *W.* take nothing by his said writ, but that he and his pledges to prosecute, *to wit*, *J. D.* and *R. R.* be therefore in mercy; and that the said *R.* do go thereof without day, &c. And further it is considered by the court here, that the said *R.* recover against the said *W.* 3*l.* 16*s.* 8*d.* for his expences and costs by him about his defence in this part sustained, to the said *R.* by the court here, according to the form of the statute in such case lately made and provided, adjudged, &c. And that the said *R.* have his execution for the same, &c.

And the said *E. H.* saith, that the said plea of him the said *T. S.* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar the said *E.* from having his said action against him the said *T.* and that he the said *E.* hath no need, nor is he obliged by
Demurrer to a plea of Nil debet to a declaration of debt on a bail-bond.

the law of the land to answer the said plea of him the said *T.* in manner and form abovesaid above pleaded; and this he is ready to verify: Wherefore for want of a sufficient plea in this behalf, the said *E.* prayeth judgment, and that his said debt, together with his damages by reason of the detaining of the debt, may be adjudged to him, &c. And for causes of demurring in law in this behalf, the said *E. II.* according to the form of the statute in such cases made and provided, sheweth to the court here these causes following, (that is to say) For this, that the said *T. S.* hath not by his said plea particularly denied nor confessed the said deed in the said declaration alledged; and also for this, that the said *T.* is estopped by the said deed to say that he doth not owe the money in the said deed mentioned; and ought to have shewn by his plea, how he is discharged from the same

Jes. dicit.

And the said *T. S.* saith, that the said plea by him the said *T.* in manner and form abovesaid pleaded, and the matter therein contained, are good and sufficient in the law to bar the said *E.* from having his said action against him the said *T.* which said plea, and the matter therein contained, he the said *T.* is ready to verify; and because the said *E.* to the said plea hath not answered, nor the same hitherto in any manner gainsaid, he the said *T.* doth pray judgment, and that he the said *E.* may be barred from having against him the said *T.* his action abovesaid, &c.

Ejectment.

Yorkshire, *A.* B. late of, *Et c.* was attached *Declaration in*
to wit, *A.* to answer *C. D.* in a plea, *treips and*
 wherefore with force and arms he entered in- *ejectment on a*
 to 500 acres of land, *Et c.* in the parish of *S.* *double demise.*
 in the county aforesaid, which *E. F.* demised
 to the said *C.* for a term of years which is not
 yet expired, and into 500 other acres, *Et c.*
 in the parish of *S.* aforesaid in the county
 aforesaid, which *G. H.* demised to the said
C. for a term of years which is not yet ex-
 pired, and ejected him from his said several
 farms, and other wrongs to him did, to the
 great damage of the said *C.* and against the
 peace of our lord the now king, *Et c.* and
 whereupon the said *C.* by *W. R.* his attor-
 ney complaineth, *That whereas* the said *E.* *First demise,*
 on the — day of — in the — year of the
 reign of the said lord the king at the castle
 of *X.* aforesaid, had demised to the said *C.*
 the tenements aforesaid first above mention-
 ed, with the appurtenances, to have and to
 hold the same tenements first above mention-
 ed, with the appurtenances, to the said *C.*
 and his assigns, from the — day of —
 then last putt to the full end and term of
 — years from thence next following, and
 fully to be complete and ended. *And whereas* *Second demise.*
 also the said *G.* on the same — day of —
 in the said — year of the reign of the said
 lord the king, at the castle of *X.* aforesaid,
 had demised to the said *C.* the tenements
 X 3 aforesaid

aforesaid last above mentioned, with the appurtenances, to have and to hold the same tenements last above mentioned, with the appurtenances, to the said C. and his assigns, from the said — day of — then last past, to the full end and term of — from thence next following, and fully to be complete and ended. *By virtue* of which said several demises, the said C. entered into the several tenements aforesaid, with the appurtenances, and was possessed thereof. *And* the said C. being so possessed thereof, the said W. afterwards, that is to say, on the — day of — in the — year of the reign of the said lord the king, with force and arms, that is to say, with swords, staves and knives, entered into the said several tenements above specified, with the appurtenances, respectively, demised to the said C. in manner aforesaid, in and upon the possession of the said C. thereof, and ejected the said C. out of his said several farms, his said several terms therein not being ended, and other enormities, &c. to the great damage, &c. and against the peace, &c. Whereupon the said C. saith, that he is injured and endamaged to the value of 10*l.* and thereof he bringeth suit, &c.

J. K. L. M. &c.

*Notice to the
tenants.*

I am informed, that you are in possession of, or claim title to the premises in this declaration of ejectionment mentioned, or to some part thereof. And I, being sued in this action as a casual ejector, and having no claim or title to the same, do advise you to appear

pear in — term next in his majesty's court of common bench at *Westminster*, by some attorney of that court, and then and there, by rule of the same court, to cause yourselves to be made defendants in my stead; otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession, I am

Your loving friend,

A. B.

Easter term in the thirteenth year of, &c.

N. to wit, *W. C.* late of *London*, gent. was attached to answer *J. M.* gent. of a plea, wherefore with force and arms he entered into two messuages, and the moiety of one messuage, with the appurtenances, in the town of *N.* which the wardens and poor of the hospital of the Holy Trinity in the county of *Surrey* had demised to the said *J.* for a term, which is not yet passed, and ejected him from his said farm, and did other injuries to him, to the great damage of the said *J.* and against the peace of our lady the present queen; and wherefore the said *J.* by *H. C.* his attorney, complains, that whereas the said wardens and poor on the nineteenth day of *March* in the thirteenth year of the reign of our sovereign lady *Anne*, by the grace of God, queen of *Great Britain*, &c. at the town of *N.* had

Declaration in judgment of a messuage and the moiety of a messuage on the demise of the wardens and poor of the hospital of the Holy Trinity in Croydon.

X 4 demised

demised to the said *J.* the tenements aforesaid, with the appurtenances, to hold and occupy the said tenements, with the appurtenances, to the said *J.* and his assigns, from the eighteenth day of the same *March* unto the end and term of ten years thence next following, and fully to be complete and ended; by virtue of which demise the said *J.* entered into the said tenement, with the appurtenances, and was possessed thereof; and the said *J.* being so possessed thereof, the said *W.* afterwards, *to wit*, on the twenty-second day of *March* aforesaid in the thirteenth year aforesaid, with force and arms, &c. entered into the said tenements, with the appurtenances, which the said wardens and poor had demised to the said *J.* in form aforesaid for a term which is not yet passed, and ejected the said *J.* from his said farm, and did other injuries, &c. to the great damage, &c. and against the peace, &c. Wherefore he says that he is injured, and has damage to the value of 40*l.* and therefore brings suit, &c.

Mr. I. R.

*Notice to the
school of law
of the*

I AM informed, that you are in possession, or claim title to the premises in this declaration of ejectionment mentioned, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim or title to the same, do advise you to appear the first day of next *Trinity* term in

in her majesty's court of common bench at Westminster by some attorney of that court, and then and there by rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession.

I am,

Your loving friend,

5 May ———

W. C.

Error.

Pleas inrolled at Westminster before Sir T. R. knight and his brethren, justices of his majesty's court of common bench of the term of Michaelmas in the tenth year of the reign of our sovereign lord George the second, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c.

Roll 1064.

Midd. *J.* D. late of Sheer-lane in the county aforelaid, gent. was summoned to answer T. K. of a plea, that he render to him 50*l.* of lawful money of Great Britain, which he owes to and unjustly detains from him, &c. and thereupon the said T. by W. M. his attorney, says, that whereas the said *J.* heretofore, that is to say, in Michaelmas term in the eighth year of the reign of our lord the now king in his own proper person came into his majesty's court here before

Declaration in debt on a recognizance of bail.

fore Sir *R. E. knt.* and his companions, then his said majesty's justices of the bench here at *Westminster* in the said county of *Middlesex*;
Recognizance. and then in the same court here did acknowledge himself to owe to the said *T.* the sum of fifty pounds, which said sum of fifty pounds the said *J.* for himself and his heirs willed and granted to be made of his goods and chattels, and to be levied to the use of the said
The condition. *T.* upon condition, that if judgment in the said court here, in a certain plea of trespass upon the case, on promise, for the said *T.* against one *G. L.* late of *St. Andrew's Holbourn*, goldsmith, should happen to be given, then the said *G.* should satisfy to the said *T.* all the damages which should be adjudged to the said *T.* against the said *G.* in the said court here, in the said plea of trespass upon the case, or render his body on that occasion to the prison of the *Fleet*, as by the record thereof in the said court here at *Westminster* aforesaid remaining may more fully appear: *And whereas* judgment for the said *T.* in the said plea of trespass upon the case against the said *G.* by the name of *G. L.* late of *St. Andrew's Holbourn* in the county aforesaid, goldsmith, afterwards in *Trinity* term in the eighth and ninth years of the reign of our said lord the king, was given in the said court of the bench here before Sir *R. E. knt.* and his companions then his majesty's justices of the bench here, *to wit*, at *Westminster* aforesaid; and the said *T.* then and there by consideration of the said court recovered against the said *G.* forty pounds, which to the said *T.* in the said court
here

Judgment against the principal.

here were adjudged for his damages which he had sustained by reason of not performing of certain promises and undertakings made to the said *T.* by the said *G.* at *Westminster* in the county of *Middlesex* aforesaid, of which the said *G.* is convicted, as by the record and proceedings thereof in the said court here at *Westminster* aforesaid remaining doth more fully appear. And the said *T.* doth aver, that the said *G.* hath not yet satisfied the said *T.* the said forty pounds for his damages aforesaid by him the said *T.* against the said *G.* so as aforesaid recovered, or any part thereof, nor rendered his body to the said prison of the *Fleet*, on that occasion, according to the form and effect of the condition of the said recognizance; and that he the said *T.* hath not yet obtained any execution of the said judgment, and that the said *T.* hath not yet sued out any execution against the said *J.* upon the said recognizance, and that the said judgment recovered in form aforesaid yet remains in its full force and effect, not in the least reversed or satisfied, and that the said recognizance acknowledged in form aforesaid still remains in its full force and effect, not vacated or satisfied; whereby an action hath accrued to the said *T.* to demand and have of the said *J.* the said fifty pounds, according to the form and effect of the said recognizance: Nevertheless the said *J.* (although often requested) hath not yet paid the said fifty pounds, or any part thereof, to the said *T.* but he to pay the same to him hitherto altogether hath, and still doth wholly refuse,

Damages not paid, nor principal rendered.

to the said *T.* his damage of ten pounds; and therefore he brings suit, &c.

Plea nil debet. And the aforesaid *J.* by *J. B.* his attorney, comes and defends the force and the wrong, when, &c. and saith, that he doth not owe the aforesaid *T.* the aforesaid fifty pounds, nor any sum of money, in the form in which the said *T.* above against him hath declared; and of this he puts himself upon the country.

Demurrer. And the said *T.* says, that the said plea of the said *J.* in manner and form as the same is pleaded, and the matter therein contained, are not sufficient in law to bar the said *T.* from having his said action maintained against the said *J.* and that he the said *T.* has no occasion, neither is he bound by the law of the land to answer to the said plea in manner and form as the same is pleaded; and this he is ready to verify: Wherefore for want of a sufficient plea in this particular the said *T.* prays judgment and his aforesaid debt, together with his damages, on occasion of detaining the aforesaid debt, to be adjudged to him, &c. and for causes of demurrer in law to the said plea, the said *T.* according to the form of the statute in such case made and provided, shews to this court here these causes following, *to wit*, for that the said *J.* by the said plea neither admits nor denies the several records mentioned in the above declaration of the said *T.* and also for that the said *J.* by his said plea hath endeavoured to put matters of record in issue to be tried by the country; and for that the said plea is uncertain, insufficient, and wants form, &c.

J. Agar.

And the said *J.* although solemnly called on to join in demurrer to the said demurrer in law of the said *T.* cometh not, but maketh default: therefore it is considered, that the said *T.* recover against the said *J.* his debt aforesaid, and also ten pounds for his damages which he hath sustained on occasion of the detaining of that debt, adjudged to the said *T.* with his consent by his majesty's court here; and the said *J.* is at the mercy, &c.

Judgment for not joining in demurrer.

Signed 28 Oct. 1736.

Mercy.

Afterwards, *to wit*, on *Wednesday* next after the morrow of *All-Souls* in this same term, comes the aforesaid *J. D.* before our lord the king at *Westminster*, by *S. R.* his attorney, and saith, that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, that is to say, that the declaration aforesaid, and the matter in the same contained, are not sufficient in law for the said *T. K.* to maintain his said action against the said *J. D.* There is also error in this, that by the said record it appears, that the judgment aforesaid in the plea aforesaid, in form aforesaid given, was given for the said *T.* against the said *J.* when by the law of the land of this kingdom of *Great Britain*, that judgment ought to have been given for the said *J.* against the said *T.* There is error also in this, that there is no original writ between the parties aforesaid of the plea aforesaid, in the aforesaid court of common bench, filed or remaining of record in the custody of the keeper of the writs and rolls of the said court of common bench of the said lord the king, to warrant the judgment and declaration aforesaid in the record

Errors assigned.

No original.

*Certiorari to
the custos bre-
vium prayed.*

cord aforesaid, and therefore in that it is manifestly erroneous: Whereupon the said *J.* prays a writ of our said lord the king of *certiorari*, to be directed to the right honourable *G. H.* earl of *Litchfield*, keeper of the writs and rolls of the said court of the bench of the said lord the king, to certify to the said lord the king more fully the truth of the same; and it is granted to him, &c. The said *J.* also prays that the judgment aforesaid, for the errors aforesaid, and other the errors in the record and proceedings aforesaid being, may be reversed, annulled and held intirely for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment; and also that the said *T.* may rejoin to these errors. *W. Browne.*

*Award of cer-
tiorari.*

Wherefore *G. H.* earl of *Litchfield*, keeper of the writs and rolls of the court of our lord the king of the common bench, is commanded that he search the original writs of our said lord the king, directed to the sheriff of *Middlesex* of the term of *St. Michael* in the tenth year of the reign of our said lord the king, and filed of record in his custody, and what he shall find therein of an original writ, between the parties aforesaid, of the plea aforesaid, together with the return and indorsement thereof, as fully and intirely as the same remains in his custody, he do certify without delay to our said lord the king wheresoever, &c. together with the said writ directed to him in that behalf. But the said keeper of the writs and rolls hath not returned the said writ directed to him as aforesaid,

*Custos bre-
vium non misit
breve.*

said, nor hath done any thing therein. *And Joinder in error.* hereupon the said T. K. in his proper person voluntarily comes here into court, and having heard the errors aforesaid, forthwith saith that neither in the record and proceedings aforesaid, nor in giving the judgment aforesaid, is there any error; and prays, that the court of our lord the king now here would proceed to the examination as well of the record and proceedings aforesaid, as of the matters above assigned for error: And that the judgment aforesaid may be affirmed. *But Continuance by cur' advisar' vult.* because the court of our lord the king now here is not yet advised of giving judgment of and upon the premisses, a day is therein given to the parties aforesaid, before our lord the king, until wheresoever *&c.* for hearing judgment thereon, for that the court of our said lord the king now here is not yet advised thereof, *&c.*

*Homine * replegiando.*

Michaelmas Term in the 18th year of king George the third.

Berks, N. L. gent. was attached to answer *Count in Ho-*
to wit. *W. H.* and *S.* his wife, of a mine replegi-
 plea, wherefore the said *S.* he took, and *ando.* See
Salk. 5. 705.

* This writ is mentioned as a subsisting remedy in some of the modern books, [See 3 Mod. 120. 3 P. Wl. 154. R. Raym. Eq. Cas. abr.] but the general remedy is by the writ of *Hab. Corp.* at Common Law. *Wynne's* Observ. on Fitzh. Nag. Brev.

taken

Lilly's Ent.
293.

taken holdeth, &c. *And whereupon* the said *W.* and *S.* by *H. M.* their attorney complain that the said *N.* on the 20th day of *May* in the 1st year of the reign of our lord the present king at *Wantage* in the county aforesaid, took the said *S.* and her taken still holdeth: Wherefore they say that they are injured, and have damage to the value of 5000*l.* and thereof they bring, suit, &c.

*Plea, Non
cepit.*

And the said *N.* in his proper person cometh and defendeth the force and injury, when, &c. and saith, that he did not take the said *S.* in the said declaration mentioned, in manner and form as the said *W. H.* and *S.* his wife above complain against him; and of this he putteth himself upon the country.

Hil. 8 Geo. 2 rot. 1260. C. B.

Herefordshire, R. *S.* was attached to answer to wit. *W. B.* gent. of a plea, wherefore he took *S.* the wife of the said *W.* and keepeth her taken, &c. *and whereupon* the said *W.* by *J. C.* his attorney complaineth that the said *R.* on the 1st day of *June* in the year of our Lord 1734, at the parish of *B.* in the county aforesaid, took the said *S.* the wife of the said *W.* and keepeth her yet taken; whereby he saith, that he is prejudiced and damnified to the value of 500*l.* and thereof he bringeth suit, &c.

*Plea non cepit; verdict pro quer. 100*l.* damages.*

Judgments.

AND now at this day, *to wit*, Saturday Judgment is next after the octave of St. Hilary in this same term, until which day the said *E. S.* *case by Nil* *T. P.* and *H. M.* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at Westminster cometh as well the said *G. R.* by his attorney aforesaid, as the said *E.* and *T.* by *R. G.* their attorney, and the said *H.* at the same day, although solemnly demanded, doth not come, neither doth he say any thing thereupon, in bar or preclusion of the action of the said *G.* by which the said *G.* remaineth thereupon against the said *H.* undefended, &c. For which it is considered that the said *G.* ought to recover against the said *H.* his damages by occasion of the premisses; but because it is not known whether the said *E.* and *T.* may be convicted of the premisses above laid to their charge or not, and if they can be convicted, it is convenient that there should be but one taxation of the said damages; Therefore let the inquisition for damages against the said *H.* stay until the plea between the said *G.* and the said *E.* and *T.* be determined in some lawful manner, &c. And the said *E. S.* and *T. P.* (all and all manner of exceptions as to the said bill being saved to them) defend the wrong and injury. And the said *E.* saith, &c. (The defendants pleaded severally in abatement the privilege of *C. B.*)

*Judgment by
Nil dicit in
case sur as-
sumpt. at the
suit of an at-
torney.*

*Inquiry
awarded.*

The return.

And the said C. K. by J. C. his attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the aforesaid action of the said G. D. whereby the said G. remaineth against the said C. therein undefended, wherefore the said C. ought to recover against the said C. his damages occasioned by not performing the promises and undertakings aforesaid: *But* because it is not known what damages the said G. has sustained by occasion of the not performing the promises and undertakings aforesaid; *Therefore* the sheriff is commanded, that by the oath of 12 honest and lawful men of his bailiwick, he diligently inquire what damages the said G. has sustained, as well by occasion of not performing the promises and undertakings aforesaid, as for his costs and charges by him about his suit in this behalf laid out, and the inquisition which the sheriff shall make thereon, he make appear here on *Monday* next after the octave of *St. Martin*, under his seal and the seals of those by whose oath he shall take such inquisition; *At which day* here cometh the said G. in his proper person, and the sheriff, *to wit*, H. M. esq; and R. II. esq; now return here a certain inquisition taken before him at the court-house *Westminster* in the county aforesaid, the 24th day of *November* in the 14th year of the reign of our lord the now king, by the oath of 12 honest and lawful men of his bailiwick; by which it is found, that the said G. hath sustained damages by occasion

occasion of the premisses, besides his costs and charges by him about his suit in this behalf laid out, to 31*l.* 10*s.* and for those costs and charges to 20*s.* *Therefore* it is considered, *Final judgment.* that the said *G.* recover against the said *C.* his damages aforesaid, by the inquisition aforesaid in form aforesaid found to 32*l.* 10*s.* *Judgment signed 19 Jan. 1740.* and also 10*l.* 10*s.* to the said *G.* at his request, for his costs and charges by the court here of increase adjudged, which said damages amount in the whole to 43*l.* *And Mercy.* the said *C.* in mercy, &c.

And the said *F.* saith nothing in bar or preclusion of the said action of the said *S.* of the said trespass made in the said tenements newly assigned, whereby the said *S.* remaineth against the said *F.* therein undefended; wherefore the said *S.* ought to recover against the said *F.* his damages by occasion of the said trespass: But because it is not known what damages the said *S.* hath sustained by occasion of the said trespass, the sheriff is commanded, &c. *Judgment by Nil dicit in trespass after a new assignment. 2 Vent. 49.*

And the said *L.* by *R. N.* his attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar of the said action of the said *R.* whereby the said *R.* remaineth against the said *L.* thereof undefended: *Therefore* it is considered, that the said *R.* recover against the said *L.* his said debt, and his damages by the occasion of the detaining of that debt, to 40*s.* to the said *R.* by his assent by the court here adjudged; and the said *L.* in mercy, &c. *Judgment in debt by Nil dicit.*

*Judgment in
debt by Nil
dicit against
an attorney,
with impar-
lance.*

And the said *S.* in his proper person cometh and defendeth the force and injury, *&c.* and the said *J.* prayeth that the said *S.* may answer, and the said *S.* prayeth leave thereupon of imparling here until the octave of *St. Hilary*; and he has, *&c.* the same day is given to the said *J.* here, *&c.* *At which day* here came as well the said *J.* by his attorney aforesaid, as the said *S.* in his proper person; and the said *S.* further prayeth leave thereupon of imparling here until fifteen days of *Easter*; and he hath, *&c.* the same day is given to the said *J.* *&c.* *At which day* here came as well the said *J.* by his attorney aforesaid, as the said *S.* in his proper person; and the said *S.* further prayeth leave thereupon of imparling here until the morrow of the holy *Trinity*; and he hath, *&c.* the same day is given to the said *J.* here, *&c.* *At which day*, here came as well the said *J.* by his attorney aforesaid, as the said *S.* in his proper person, and as before the said *J.* prayeth that the said *S.* may answer, and the said *S.* as before defendeth the force and injury, *&c.* and saith nothing in bar or preclusion of the said action of the said *J.* whereby the said *J.* remaineth against the said *S.* therein undefended: *Therefore* it is considered that the said *J.* recover against the said *S.* his said debt and his damages by the occasion of the detaining that debt to 30*s.* to the said *J.* by his assent, by the court here adjudged. And the said *S.* in mercy, *&c.*

And

And the said *B.* by *W. R.* her attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the said action of the said *T.* and *D.* whereby the said *T.* and *D.* remain against the said *B.* therein undefended: *Therefore* it is considered, that the said *T.* and *D.* recover against the said *B.* their said debt, and their damages by the occasion of the detaining that debt to 50*s.* to the said *T.* and *D.* by their assent by the court here adjudged, to be levied of the goods and chattels which were of the said earl at the time of his death, being in the hands of the said *B.* to be administered, if she had so much thereof in her hands to be administered; and if she hath not, then the said damages to be levied of the proper goods and chattels of the said *B.* And the said *B.* in mercy, &c.

And the said *B.* by *W. R.* her attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the said action of the said *T.* and *D.* whereby the said *T.* and *D.* remain against the said *B.* therein undefended: And hereupon the said *T.* and *D.* freely here in court remit to the said *B.* the said 100*l.* and 400*l.* in the said declaration first demanded, and pray judgment against the said *B.* for the said 100*l.* and 400*l.* in the same declaration last demanded, together with their damages, costs and charges by the occasion of the detaining of the same 100*l.* and 400*l.* to be adjudged to them, &c. *Therefore* it is considered, that the said *T.* and *D.* recover

*Judgment in
debt by Nil
dicit against
an executrix.*

*Judgment in
debt by Nil
dicit against
an executrix,
with a Remit-
titure of part
of the debt.
3 Mod. 153.
Salk. 65.
Comb. 87.*

against the said *B.* the said 100*l.* and 400*l.* in the said declaration last demanded, and their damages by the occasion of the detaining of the same 100*l.* and 400*l.* to 7*l.* to the said *T.* and *D.* by their assent, by the court here adjudged to be levied of the goods and chattels which were of the said earl at the time of his death, being in the hands of the said *D.* to be administered, if she hath so much thereof in her hands to be administered; and if she hath not, then the said damages to be levied of the proper goods and chattels of the said *B.* And the said *B.* in mercy, &c. And that the said *B.* be quit of the said 100*l.* and 400*l.* in the said declaration first demanded, &c.

*Judgment in
ejectment by
Nil dicat.*

*Award of
writ of in-
quiry.*

And the said *J.* by *R. B.* his attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the said action of the said *C.* by which the said *C.* remaineth thereupon undefended against the said *J.* Therefore it is considered that the said *C.* recover against the said *J.* his said term yet to come of and in the tenements aforesaid, with the appurtenances, and his damages by occasion of the said trespass and ejectment; but because it is unknown what damages the said *C.* hath sustained by occasion of the trespass and ejectment aforesaid; *It is commanded* to the sheriff, that by the oath of 12 good and lawful men of his county he diligently inquire what damages the said *C.* hath sustained as well by occasion of the trespass and ejectment aforesaid, as for his costs and charges by him expended

expended about his suit in his behalf; and that the inquisition which, &c. he make apparent here from the day of *Easter* in 15 days, under the seal, &c. and the seals, &c. The same day is given to the said J. here, &c. And upon this the said C. prayeth the writ of our lord the king to be directed to the sheriff aforesaid, to cause him to have possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances; and it is granted to him, returnable here at the time aforesaid, &c.

*Award of
Habere fac.
possessionem.*

And the said W. by H. G. his attorney cometh and defendeth the force and injury, when, &c. and the same attorney saith, that he is not informed by the said W. of any answer to be given for the said W. to the said E. in the said plaint, and he saith nothing else thereupon, by which the said E. remaineth thereupon undefended against the said W. [*the rest is exactly the same as in a judgment by Nil dicit.*]

*Judgment for
the plt. by
Non sum in-
formatus in
case sur as-
sumpsit.*

And the said E. by T. K. his attorney cometh and defendeth the force and injury, when, &c. and the said attorney saith, that he is not informed by the said E. of any answer to be given for the said E. to the said A. and B. in the said plaint; and he saith nothing else thereupon, whereby the said A. and B. remain against the said E. therein undefended: Therefore it is considered, that the said A. and B. recover against the said E. their said debt and their damages by occasion of the detaining that debt, to 63 s. to the same A. and B. by their assent by the

*Judgment in
debt by Non
sum informa-
tus.*

court here adjudged. And the said *E.* in mercy, &c.

*Judgment in
ejectment by
Non sum in-
form.*

And the said *H.* by *R. C.* his attorney cometh and defendeth the force and injury, when, &c. and the same attorney saith, that he is not informed by the said *H.* of any answer to be given for the said *H.* to the said *G.* in the aforesaid plaint, and he saith nothing else thereupon, by which the said *C.* remaineth thereupon undefended against the said *H.* Therefore it is considered, that the said *C.* recover against the said *H.* his said term yet to come of and in the manor and tenements aforesaid, with the appurtenances; Also the said *C.* ought to recover against the said *H.* his damages by occasion of the trespass and ejectment aforesaid; but because [the rest exactly the same as in judgment by Nil dicit.]

*Judgment in
debt against
an executor
by Relicta ve-
rificat. after
Plene. admi-
nistravit
pleaded.*

At which day come here as well the said *C.* as the said *A.* by their attornies aforesaid, and hereupon the said *A.* departing from his averment aforesaid by him above pretended, saith, that he cannot gainsay the action aforesaid of the said *C.* nor that he on the said day of obtaining the original writ of the said *C.* had divers goods and chattels which were the said *T.*'s at the time of his death in his hands to be administered, to the value of the said debt, wherout he could have satisfied the said *C.* for that debt, as the said *A.* hath above alledged: Therefore it is considered, that the said *C.* recover against the said *A.* his debt aforesaid, to be levied of the goods and chattels which were the said *T.*'s at the
time

time of his death, in the hands of the said *A.* to be administered, and 80 s. for his damages by occasion of detaining that debt, adjudged by the court here to the said *C.* with his assent, to be levied also of the said goods and chattels, if the said *A.* hath so much thereof to be administered; and if he hath not, then the damages aforesaid to be levied of the said *A.*'s proper goods and chattels. And the said *A.* in mercy, &c.

At which day come here as well the said *C.* as the said *A.* by their attorneys aforesaid; *And* hereupon the same *A.* departing from his averment and proof by him above pretended, saith, that he cannot gainsay the action aforesaid of the said *C.* or that the said *J.* in his life-time undertook in manner and form as the said *C.* above complaineth against him; by reason whereof the said *C.* ought to recover against the said *A.* his damages by occasion of the non-performance of the promises and undertakings aforesaid: But because it is unknown, &c.

Judgment in case against an executor by Relicta verific. after Plene administravit pleaded.
Signed for not paying for the issue book.

And the said *L.* in his proper person cometh and defendeth the force and injury, when, &c. and prayeth leave to imparl here until the morrow of the holy *Trinity*, and he hath it, &c. The same day is given to the said *J.* here, &c. And now here at this day, *to wit*, the said morrow, &c. come as well the said *J.* by his attorney aforesaid, as the said *L.* in his proper person; and hereupon the said *J.* prayeth that the said *L.* may answer. And the said *L.* as before defendeth the force and

Plea, Non est and injury, when, &c. and saith, that he
factum.

ought not to be charged with the debt aforesaid, by virtue of the writing aforesaid, because he saith, that that writing is not his deed; and of this he putteth himself upon the country; and the said J. likewise doth the same. *Therefore, &c.* At which day

*Judgment by
Relicta verifi-
catione.*

come here as well the said J. by his said attorney, as the said L. in his proper person; and hereupon the said L. waiving his plea aforesaid by him above pleaded, saith, that he cannot deny the action of the said J. nor but that the said writing is his deed, nor but that he oweth to the aforesaid J. the said 200*l.* in manner and form as the said J. hath above declared against him: *Therefore* it is considered, &c.

*Judgment of
Non Pros' in
replevin, for
not entering
the issue.*

And hereupon the said B. although solemnly demanded, cometh not, nor hath he entered his issue aforesaid, neither doth he further prosecute his writ aforesaid; *Therefore* it is considered, that the said B. and his pledges for prosecuting thereof be in mercy, &c. let the names of the pledges be inquired, &c. and that the said J. S. go thereof without day, &c. and that he have a return of the goods and chattels aforesaid, and in what manner, &c. let the sheriff make known hereon.——*And* hereupon the said J. S. prayeth that the justices here will at their discretion here in court assess his damages sustained as well by reason of the premises, as for his costs and charges by him expended about his suit in this behalf: *Whereupon* the said justices here, as well at the prayer of the said

said J. S. as by the consent of the said B. do assess the damages of him the said J. S. sustained as well by reason of, the premisses, as for his said costs and charges, to ——— : *Therefore* it is considered, that the said J. S. recover against the said B. his damages aforesaid assessed by the justices here in form aforesaid. And the said B. in mercy, &c.

And because the justices here will advise themselves of and upon the premisses before they give judgment thereupon, day is given to the parties here until from the day of St. Michael in three weeks, to hear their judgment thereupon, for that the same justices are not thereupon, &c. At which day cometh here as well the said S. as the said N. by their attornies aforesaid, and upon this the said premisses being seen and fully understood by the justices here, it seemeth to the justices here, that the said plea of the said N. above pleaded in bar, and the matter contained in the same, are not sufficient in law to preclude the said S. from having his action against the said N. as the said S. has above alledged; for which the said S. ought to recover his damages by occasion of the premisses against the said N. But because it is not known what damages, &c.

But because it is unknown what damages the said E. has sustained by occasion of the premisses, *It is commanded* to the sheriff, that by the oath of good and lawful men of the county aforesaid, he diligently inquire what damages the said E. hath sustained, as well by occasion of the premisses aforesaid, as for her

Judgment for the plt. on a demurrer to a plea in case sur assump.

Award of inquiry in case sur assumpsit.
 1 D. 70. p. 7.
 3 Mod. 190.

her costs and charges expended by her about her suit in this behalf, and let the sheriff make apparent the inquisition which he shall make thereof to the justices of the lord the king at *Westminster* from the day of *Easter* in 15 days, under his seal and the seals, &c.

Vic. non mi- sit breve. *At which day* here cometh the said *E.* by her attorney aforesaid, and the sheriff did nothing therein, neither did he send the writ:

Alias awarded. *Therefore,* as at first, let there be another writ to him thereupon in form aforesaid, returnable here from the day of the Holy Trinity in three weeks, &c. *At which day* here cometh the said *E.* by her attorney aforesaid, and the sheriff, namely Sir *B. T.* knt. and Sir *T. K.* knt. now return here a certain inquisition taken before him at the *Sugar-loaf* in *Hatton-garden* in the county aforesaid, on the 18th day of *June* last past, by the oath of 12, &c. by which it is found, that the said *E.* hath sustained damages by occasion of the premisses, over and above her costs and charges laid out by her about her suit in this behalf, to 200*l.* and for those costs and charges to 20*s.* *Therefore, &c.*

Judgment after two Nihilis on a Scifac. to revive a former judgment on a Scifac. upon a recognizance of bail. *And* upon this the said *W. H.* and *A.* pray execution against the said *R. W. E.* and *L.* of the said several sums of money severally acknowledged by them in form aforesaid, according to the form of the judgment of adjudication of execution aforesaid, to be adjudged to them: *Therefore* it is considered, that the said *W. H.* and *A.* have execution against the said *R. W. E.* and *L.* according to the form of the said judgment of adjudication

cation of execution aforesaid, by default,
 &c.

And upon this the said *A.* prayeth execution against the said *R.* and *W.* of the said several sums of 44 *l.* severally acknowledged by them in form aforesaid, and also against the said *L.* of the said 88 *l.* acknowledged by him in form aforesaid, according to the form of the said recognizance: *Therefore* it is considered, that the said *A.* have execution against both of them the said *R.* and *W.* of the said several sums of 44 *l.* severally acknowledged by them in form aforesaid, and against the said *L.* of the said 88 *l.* acknowledged by him in form aforesaid by default, &c.

Judgment after two Nihilis on a Sci. fac. upon a recognizance of bail.

Therefore it is considered, that the said *M.* have execution against the said *R.* of the debt and damages aforesaid by default, &c.

Judgment after one Nihil on a sci. fac. to receive a judgment in debt.

Therefore it is considered, that the said *J.* recover against the said *T.* her said debt and her damages aforesaid, assessed by the said jury in form aforesaid to 21 *s.* And also 15 *l.* 6 *s.* to the said *J.* at her request, for her said costs and charges, by the court here of increase adjudged: Which said damages in the whole amount to 16 *l.* 7 *s.* And the said *T.* in mercy, &c.

Judgment in debt after verdict for the plaintiff.

And because the justices here are willing to advise themselves of and upon the premisses before they give judgment thereupon, day is given to the said parties here until on the octave of St. Hilary, to hear their judgment thereupon, for that the same justices here are not yet, &c. At which day here came as well

Judgment for the defendant in ejectment, on a special verdict.

well the said *T.* as the said *H.* by their attornies aforesaid. And because the justices here are willing further to advise themselves of and upon the premisses before they give judgment thereupon, day is further given to the said parties here until from the day of *Easter* in 15 days to hear their judgment thereupon, for that the same justices here are not yet, &c. *At which day* here came as well the said *T.* as the said *H.* by their attornies, &c. aforesaid, [*continuances in like manner to the octave of St. Hil.*] *At which day* here came as well the said *T.* as the said *H.* by their attornies aforesaid; whereupon the premisses being seen and fully understood by the justices here, it seemeth to the same justices here, that the said *H.* is in nothing guilty of the trespass and ejectment aforesaid, as he the said *H.* above in pleading for himself hath alledged; *Therefore* it is considered, that the said *T.* take nothing by his said writ, but be in mercy for his false clamor thereupon; and that the said *H.* go thereof without day, &c. *Also* it is considered that the said *H.* recover against the said *T.* his damages by occasion of the premisses, to 15 *l.* 4 *s.* by the direction of the justices here to the same *H.* at his request, for his costs and charges by him in that behalf sustained, according to the form of the statute, &c. by the court here adjudged, &c.

*Judgment for
the defendant
on a verdict
upon Non as-
sumpt:*

Because as well, &c. *At which day* the jury between the parties aforesaid in the plea afterwards was thereupon respited between them here until to this day, *to wit,* from the day

day of St. *Michael* in three weeks then next following, unless the justices of our sovereign lord and lady the king and queen, assigned to take the assises in the county aforesaid, by form of the statute, &c. should first come on *Monday* the 15th day of *September* next past, at the town of *Huntingdon* in the county aforesaid. And now here at this day the said *J. S.* cometh by his attorney aforesaid, and the said justices of assize, before whom &c. sent here their record in these words; *Afterwards* [see *Posseas.*] *Therefore* it is considered, that the said *J. M.* take nothing by his said writ, but be in mercy for his false clamor thereupon. And that the said *J. S.* go thereupon without day, &c. It is also considered, that the said *J. S.* recover against the said *J. M.* his damages by occasion of the premises, to 7*l.* by the direction of the justices here adjudged by the court here according to the form of the statute, &c. to the said *J. S.* at his request, for his costs and charges by him sustained in this behalf.

Signed 17 November 2 W. & M.

Because as well, &c. *At which day* the judgment for the plaintiff on a verdict upon Non assumpsit.
 jury between the parties aforesaid in the plea aforesaid was respited thereupon between them here until to this day, to wit, from the day of the Holy Trinity in three weeks then next following, unless Sir *E. H.* knight, chief justice of our lord the king of the bench here assigned by form of the statute, &c. should first come on *Saturday* the 11th day of *June* next past, at *Westminster* within the hall there commonly called *Westminster-hall*

ball in the county aforesaid; and now here at this day the said G. comes by his attorney aforesaid. And the said chief justice before whom, &c. sent here his record in these words, *Afterwards* [see *Posteas*.] Therefore it is considered, that the said G. do recover his said damages against the said R. to 75 *l.* 5 *s.* assessed by the said jury in form aforesaid; and also 13 *l.* 15 *s.* adjudged by the court here, to the said G. at his request, of increase for his said costs and charges; which said damages in the whole amount to 89 *l.* And the said R. in mercy, &c.

*Judgment in
ejection after
verdict for the
plaintiff.*

*Habere facias
possessionem.*

And because [continuance by Cur' advise vult] At which day here cometh as well the said C. as the said T. by their attornies aforesaid. And upon this the premisses being seen and fully understood by the justices here, *It is considered*, that the said C. recover against the said T. his said term yet to come of and in the said tenements, with the appurtenances, and his said damages to 40 *s.* 6 *d.* assessed by the said jury in form aforesaid. And also 7 *l.* 19 *s.* 6 *d.* to the said C. at his request, for his said costs and charges by the court here of increase adjudged; which said damages in the whole amount to 10 *l.* and that the said T. be taken, &c. And upon this the said C. prayeth the writ of the lord the king to be directed to the sheriff of the county aforesaid, to cause him to have his possession of his said term yet to come of and in the said tenements, with the appurtenances. And it is granted to him returnable

able here from the day of *Easter* in 15 days,
&c.

And because [*continuances by cur' advisare* *Judgment in*
vult] At which day here cometh as well the *trepass* for
 said *G.* as the said *E.* by their attornies afore- the plaintiff,
 said. Upon which, all and singular the pre- after verdict
 misses aforesaid being seen and fully under- on Not guilty
 stood by the justices here, it seemeth to the as to port, and
 same justices that the plea of the said *E.* a demurrer to
 above in rejoining pleaded in manner and to the residue;
 form aforesaid, and the matter in the same whereupon the
 contained, are not sufficient in law to pre- jury gave
 clude the said *G.* from having his said action 300*l.* dama-
 thereupon, as the said *G.* hath within alledg- ges as to the
 ed; It is considered, that the said *G.* recover issue in fact,
 against the said *E.* his said several damages and 200*l.*
 to 500*l.* and the said 40*s.* assessed by the contingent da-
 said jury in form aforesaid, and also 28*l.* mages on the
 adjudged by the court here to the said *G.* at issue in law.
 his request, of increate, for his said costs and
 charges, which said damages in the whole
 amount to 530*l.* And that the said *E.* be
 taken, *&c.*

Therefore it is considered, that the said *J.* *Judgment in*
 recover against the said *T.* her said damages *covenant after*
 assessed by the said jury in form aforesaid, verdict for the
 to 61*l.* and also 34*l.* 12*s.* 10*d.* to the said plaintiff.
J. at her request, for her said costs and charges,
 by the court here of increate adjudged;
 which said damages in the whole amount to
 95*l.* 12*s.* 10*d.* and the said *T.* in mercy,
&c.

[The *Postea*] Therefore it is considered, *Judgment for*
 that the said *W.C.* and his pledges for pro- the defendants
 secuting are in mercy, *&c.* *Quer' nom' p'ey'*, in return on
 Vol. II. Z *&c.* a nonsuit.

Nisi prius.

Ec. and that the said *W. B. J. T.* and *C.* go thereof without day, *Ec.* and that they have a return of the cattle, *Ec.* and in what manner, *Ec.* the sheriff make appear here on the octave of *St. Hilary.* Also it is considered, that the said *W. B. J. T.* and *C.* recover against the said *W. C.* their said damages assessed by the said jury in form afore said to 40*s.* 2*d.* and also 10*l.* 19*s.* 10*d.* to the said *W. B. J. T.* and *C.* at their request for their said costs and charges by the court hereof increase adjudged, which said damages in the whole amount to 13*l.* *Ec.*

Poslea.

Poslea ver-
dict per the
plaintiff in
case for as-
sumpt.

Afterwards (that is to say) on the day and year, and at the place within mentioned, cometh as well the within named *R. L.* by his attorney within named, as the within named *M. U.* in his proper person before Sir *J. W.* knt. the chief justice within named; and the jurors of the jury whereof mention is within made, summoned to be upon that jury, being impanelled and drawn by ballot according to the form of the statute, *Ec.* and being called over, came; who to speak the truth of the matters within contained being tried and sworn upon their oath say, that the said *M. U.* did undertake and promise in manner and form as the said *R. L.* hath within complained against him; and they assess the damages of the said *R. L.* by reason thereof,

b C. s

besides his costs and charges by him laid out about his suit in this behalf, to 3*l.* 8*s.* and for his costs and charges to 1*s.*

Replevin.

Common Pleas.

Hilary 16 George the third.

Lincolnshire, *R. B.* was summoned to answer to *S. B.* gent. in a plea, *replevin.* *Declaration in to wit,* wherefore he took the cattle of the said *S.* and unjustly detained the same against sureties and pledges, &c. And whereupon the said *S.* by *W. P.* his attorney complaineth, that the said *R.* on the 2d day of *August* in the year of our Lord 1775. at *M.* in the said county in a certain piece of ground there called the *Lord's Meadows*, took the cattle, *to wit* three heifers and nine steers of the said *S.* and unjustly detained the same against sureties and pledges until, &c. whereby the said *S.* saith that he is prejudiced and damaged to the value of 50*l.* and thereof he bringeth suit, &c.

And the said *R.* by *J. C.* his attorney cometh and defendeth the force and injury when, &c. and well avoweth the taking of the said cattle in the said place in which, &c. and justly, &c. because he saith, that *W.* duke of *P.* before the said time when, &c. was seised of the said piece of ground called

Avowry as lessee for years for damage-feeasant.

the *Lord's Meadows* in which, &c. with the appurtenances in his demesne as of fee; and being so seized thereof he the said *W. duke of P.* long before the time when, &c. to wit, on the 1st day of *April* in the year of our Lord 1773. at *M.* aforesaid demised the said piece of ground in which, &c. with the appurtenances to the said *R.* To have and to hold the same to the said *R.* from the feast of the annunciation of the blessed virgin *Mary* then last past, for and during the term of 21 years from thence next ensuing and fully to be complete and ended. By virtue of which said demise thereof the said *R.* entered into the said demised piece of ground in which, &c. with the appurtenances, and at the same time when, &c. was and still is possessed thereof by virtue of the said demise; and because the said cattle in the said declaration mentioned at the said time when, &c. were in the said piece of ground in which, &c. eating the corn of the said *R.* there growing, and doing damage there; Therefore he the said *R.* well avoweth the taking of the said cattle in the said piece of ground in which, &c. and justly, &c. as a distress for the said damage; and this he is ready to verify: Wherefore he prayeth judgment and a return of the said cattle, together with his damages, &c. according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

Bar, right of common in the And the said *S.* saith, that by reason of any thing above alledged by the said *R.* he does not say, the said *R.* ought not to avow the taking of
 &c. the

the said cattle in the said place in which, &c. to be just, because he saith, that the said place in which, &c. is and from time whereof the memory of man is not to the contrary, hath been parcel of certain grounds called the *Lord's Meadows* in *M.* aforesaid; and that he the said *S.* at the said time when, &c. and long before was and still is seised in his demesne as of fee of 130 acres of land with the appurtenances in *M.* aforesaid. And the said *S.* and all those whose estate he hath in his said 130 acres of land with the appurtenances, from time whereof the memory of man is not to the contrary, have had and used, and have been accustomed, and of right ought to have and use common of pasture in the said piece of ground called the *Lord's Meadow*, whereof, &c. (his and their own land there excepted) for 37 of their commonable neat beasts, couchant and levant on the said 130 acres of land of the said *S.* with the appurtenances every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following, as belonging and appertaining to the said 130 acres of land, with the appurtenances: And therefore he the said *S.* being seised of his said 130 acres of land, with the appurtenances as aforesaid, on the said 2d day of *August* in which, &c. put the said cattle in the said declaration mentioned, being his own commonable neat beasts, and couchant and levant on his said 130 acres of land, with the appurtenances, into the said

place in which, &c. parcel, &c. to use his said common of pasture there. which said cattle were there on that occasion until the said R. in his own wrong; at the said time when, &c. took the said cattle in the said place in which, &c. parcel, &c. and unjustly detained them against sureties and pledges until, &c. as the said S. hath above complained against him; and this he is ready to verify; *Wherefore* in as much as the said R. hath above acknowledged the taking of the cattle in the said place in which, &c. parcel, &c. he the said S. prayeth judgment and his damages by reason of the taking and unjustly detaining thereof, to be adjudged to him, &c.

Replication.

And the said R. saith, that by reason of any thing above alledged by the said plea in bar of the said S. to the said avowry of the said R. he ought not to be barred from having his said avowry, because he says, that the said cattle at the said time when, &c. were in the said place in which, &c. by the wrong of the said S. eating the corn of the said R. there growing, and doing damage there, as the said R. hath by his said avowry above alledged; *Without this*, that the said S. and all those whose estates he hath in the

Traverse.

said 130 acres of land with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and used, and have been accustomed, and of right ought to have and use common of pasture in the said piece of ground called the

Lora's

Lord's Meadows, whereof, &c. (his and their own land there excepted) for 37 of their commonable neat beasts couchant and levant on the said 130 acres of land of the said S. with the appurtenances, every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following, *As* belonging and appertaining to the said 130 acres of land with the appurtenances, in manner and form as the said S. hath by his said plea in bar to the said avowry in that respect above alledged; and this he is ready to verify: *Wherefore*, as before he prayeth judgment and a return of the said cattle together with his damages, &c. according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

And the said S. saith, as before, that the said S. and all those whose estate he hath in the said 130 acres of land with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and used, and have been accustomed, and of right ought to have and use common of pasture in the said piece of ground called the *Lord's Meadows*, &c. (his and their own land there excepted) for 37 of their commonable neat beasts, couchant and levant on the said 130 acres of land of the said S. with the appurtenances, every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following, *As* belonging and appertaining to the said 130

Issue.
Venire.

acres of land with the appurtenances in manner and form as the said S. hath by his said plea in bar to the said avowry in that respect above alledged; and this he prayeth may be inquired of by the country; and the said R. doth so likewise. *Therefore* the sheriff is commanded that he cause to come here in 8 days of the purification of the blessed virgin *Mary*, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Hil. 36 H. 6. ro. 466.

Declaration in
replevin
Heb. 10.

Surrey, to wit, Heretofore, as appeareth in the term of *St. Michael* in the 25th year of the reign of our lord the present king in the 24th roll it is so contained: *J. A.* was summoned to answer *J. D.* of a plea wherefore he took the cattle of the said *J. D.* and unjustly detained them against gages and pledges, &c. And whereupon the said *J. D.* in his proper person complaineth, that the said *J. A.* on the last day of *June* in the 34th year of the reign of our said lord the present king at *T.* in a certain place called, &c. took the cattle, to wit, three cows and four bullocks of the said *J. D.* and unjustly detained them against gages and pledges, until, &c. Whereupon he saith he is injured and hath damage to the value of 16*l.* and thereupon bringeth suit, &c. And the said *J. A.* by *W. T.* his attorney cometh and defendeth the force and injury when, &c. And prayeth

Impa. lan. e.

prayeth leave of imparling thereupon here, until from the day of St. *Ilary* in 15 days, and hath, &c. By the assent of the said *J. D.* The same day is given to him the said *J. D.* and here, &c.

And now here at this same 15th day of St. *Ilary* cometh as well the said *J. D.* in his proper person, as the said *J. A.* by his attorney aforesaid: Whereupon the said plea *Judgment for a Return. ha-* being seen, read and understood, &c. by the justices here, *bend. because* *because in the said declaration there was no mention in what place the said cattle were taken,* it seemeth to the said *no mention in the declaration in what place the cattle were taken.* justices, that a due avowry being first made by the said *J. A.* for having a return of the said cattle, then the said *J.* for the insufficiency of the said declaration, ought to have a return of the said cattle, &c. And upon this the said *J. A.* for having a return of the said cattle, well avoweth the taking the said *Avowry pro return' ha-* cattle in the town aforesaid, in a certain place called the *Vicar's Land*; and justly, &c. because he saith, that one *J. C.* vicar of the church of St. *M.* in *T.* long before the time in which the said taking is supposed to be done, was seised of two acres of land with the appurtenances in *T.* aforesaid, whereof the said place, in which, &c. is parcel, as glebe of the said church, in his demesne as of fee, in right of the said church; and being so seised thereof long before the taking, &c. demised to the said *W. A.* the said two acres of land, to have from the same day by five years thence next following [which *W.* demised over to the defendant, and so avows for

for damage-feasant] and prayeth a return of the said cattle, &c. Therefore it is granted that the said J. A. have a return of the said cattle, &c. And the said J. D. in mercy, &c.

In the county court of Middlesex held the 2d day of August in the 18th year of king George the third.

Decl. in reple- *In the county court* } J. F. was summoned
win in the *of Mid. to wit.* } to answer to J. C.
county court.
 Co. Ent. 314. in a plea wherefore he took the goods and
 b. chattels of the said J. C. and them unjustly
 detained against sureties and pledges, &c.
 Whereupon the said J. C. by S. T. his attorney complaineth, that the said J. F. on the third day of July in the 18th year of the reign of our sovereign lord George the 3d, now king of Great Britain, at the parish of St. Giles in the Fields in the said county of Middlesex, at a certain place there called and known by the name of Little St. Andrew-street in the county aforesaid, in a certain messuage situate in the said street and then in the possession of the said J. C. and within the jurisdiction of this court, did take the goods and chattels of the said J. C. that is to say, two looking-glasses in gilt frames, two brass arms and six chairs, and them unjustly detained against sureties and pledges, &c. Wherefore the said J. C. saith that he is injured and hath received damage to the value

value of * 20*l.* and thereof he bringeth this
suit, &c.

Pledges for prosecuting { *John Doe,*
and
Richard Roe.

London, to wit, J. S. late, &c. was sum- *Decl. in re-*
moned to answer to B. B. of a plea why he *plevin.*
took the goods and chattels of the said B.
and them unjustly detained against sureties
and pledges, until, &c. And whereupon
the said B. by W. S. his attorney complain-
eth, that the said J. the 29th day of August
in the 7th year of the reign of our lord the
king, who now is, &c. at L. aforesaid, that
is to say, in the parish of Christ-Church in the
ward of Farringdon-Within, in a certain place
there called the kitchen, part of the dwelling-
house of the said B. in the parish and ward
aforesaid, took the goods and chattels, that
is to say, two watches of the said B. and
them unjustly detained against sureties and
pledges until, &c. Whereupon he saith, that
he is damnified and hath sustained damages
*to the value of 40*l.* and thereof he bringeth*
this suit, &c.

And the said J. C. by S. L. his attorney *Cognizance as*
cometh and defendeth the force and injury *bailiff.*
when, &c. and as bailiff of T. D. well ac-

N. B. In replevin by plaint, the sheriff may hold
plea in his county court, although the value be of 20*l.*
or above, by force of the statute of *Marlebridge.* 2 Inst.
139, 312.

,

know-

knowledgeth the taking of the said goods, chattels and cattle in the said places in which, &c. and justly, &c. because he saith that

J. F. seized in fee. *J. F.* long before the said time when, &c. was seised of the said places in which, &c. with the appurtenances, in his demesne as of fee, and being so seised thereof, he the said

By indenture. *J. F.* by an indenture made at the parish of *Kingsnorton* aforesaid, on the 30th day of *August* in the 15th year of the reign of the late king *Charles I.* between the said *J. F.* of the one part, and *W. L.* and *M.* his wife, by the name of *M. F.* daughter of the said

Profert. *J. F.* of the other part, one part of which said indenture, sealed with the seal of the said *J. F.* the said *J. C.* bringeth here into court, bearing date the same day and year, for and in consideration of the marriage then had between the said *W.* and *M.* and to and for some maintenance and livelihood to be provided and assured to and for the said *W.* and *M.* by the said *J. F.* in satisfaction of part of the marriage portion of the said *M.*

Grants a yearly rent, did for himself and his heirs give and grant to the said *W. L.* and *M.* his wife, one annual or yearly rent of 4*l.* of lawful money

issuing out of the locus in quo, &c. of *England*, yearly issuing, payable, and going forth of the said places in which, &c. (among other things) To have, hold, receive, take and enjoy the said annual or yearly rent of 4*l.* of lawful money of *England*, unto the aforesaid *W. L.* and *M.* his wife, and the heirs of the body of the said *M.* by the said *W. L.* lawfully to be begotten for ever, to be paid at the feasts of *St. Michael*

the

the archangel, and the annunciation of the blessed virgin St. Mary, by even portions. And the said J. F. did grant for himself and his heirs, by the said indenture, that it should happen that the said annual rent of 4*l.* or any part thereof, to be in arrear and unpaid by the space of 21 days next after any of the said feasts (being lawfully demanded) then it should be lawful for the said W. L. and M. and either of them, and the heirs of the body of the said M. by the said W. L. lawfully begotten, and every of them, into the said places in which, &c. (among other lands) and every part and parcel thereof to enter and distrain, and the distress and distresses then and there found to lead, drive, chase, and carry away, and the same to impound, with-hold, detain and keep until the same annual rent of 4*l.* and every part thereof, with the arrearages, be fully satisfied and paid, as by the said indenture more fully appeareth. By virtue of which said grant thereof they the said W. L. and M. his wife became seised of the said yearly rent of 4*l.* in their demesne as of fee-tail, to wit, to them and the heirs of the body of the said M. by the said W. L. And being so seised thereof, he the said W. L. afterwards, to wit, on the 1st day of June in the year of our Lord 1681, at the parish of *Kingstorton* aforesaid died, leaving issue of his body, on the body of the said M. his wife begotten, M. L. their daughter, and no other issue; and the said M. survived him, and became sole seised of the said yearly rent, for and during the term

*with power
of distress.*

*W. L. and
M. his wife,
seised of the
rent in fee-
tail.*

*W. L. and M.
leave issue
only M. their
daughter.*

term of her natural life, the remainder thereof belonging to the said *M.* and the heirs of her body. And being so seised thereof she, the said *M.* afterwards, *to wit*, on the 1st day of *May* in the year of our Lord 1695, at the parish of *Kingsnorton* aforesaid

M. the daughter seised of the rent in tail. died seised of her said estate therein. Upon whose death the said *M.* her only daughter and heir, became seised of the said yearly rent of 4*l.* in her demesne as of fee-tail, *to wit*, to her and the heirs of her body. And being so seised thereof, she the said *M.* afterwards, *to wit*, on the 15th day of *June* in the year of our Lord 1690, at the same parish took to her husband *E. J.* by reason whereof they the said *E. J.* and *M.* his wife, in the right of the said *M.* became seised of the said yearly rent of 4*l.* in their demesne as of fee-tail, *to wit*, to them and the heirs of the body of the said *M.* And being so seised thereof, she the said *M.* afterwards, *to wit*, on the first day of *June* in the year of our Lord 1703, at the same parish died, leaving issue of her body by the said *E. M. J.* her daughter and heir, and so seised of her said estate in the said yearly rent of 4*l.*

Leaves issue M. her daughter. Upon whose death the said *E. J.* became seised of the said yearly rent of 4*l.* in his demesne, as of free-hold, for the term of his life, as tenant thereof by the law of *England*; and afterwards, *to wit*, on the 10th day of *October* 1706, at the parish of *Kingsnorton* aforesaid the said *E.* died. Upon whose death the said *M. J.* her daughter and sole heir became seised of the said yearly rent of

E. J. becomes tenant by the curtesy and dies. M. the daughter becomes seised, &c.

of 4*l.* in her demesne as of fee-tail, *to wit*,
 to her and the heirs of her body. *And being* *Marries J. D.*
 so seised thereof, she the said *M.* afterwards,
to wit, on the 20th day of *October* in the
 year last afore said, at the same parish took
 to her husband *J. D.* And thereupon the
 said *J. D.* and *M.* his wife, in right of the
 same *M.* became seised of the said yearly
 rent of 4*l.* in their demesne as of fee-tail,
to wit, to them and the heirs of the body of
 the said *M.* And being so seised thereof, he
 the said *J. D.* afterwards *to wit*, on the 1st
 day of *April* in the year of our Lord 1709, *Who dies.*
 at the same parish died, and the same *M.*
 his wife survived him, and became sole seised
 of the said yearly rent of 4*l.* in her demesne
 as of fee-tail, *to wit*, to her and the heirs of
 her body. *And being* so seised thereof, she *She marries*
 the said *M.* afterwards, *to wit*, on the 1st *W. B.*
 day of *September* in the same year, at the
 same parish took to her husband *W. B.*
 Whereupon they the said *W. B.* and *M.* his
 wife became seised in the right of the said
M. of the said yearly rent of 4*l.* in their
 demesne as of fee-tail, *to wit*, to them and
 the heirs of the body of the said *M.* *And* *A fine levied.*
 being so seised thereof, afterwards, *to wit*,
 in the term of *St. Hilary* the 8th year of the
 reign of the late queen *Anne*, a certain fine
 was levied in the court of the said late queen
 of the bench here, *to wit*, at *Westminster*,
 before *T. T. J. B. R. F.* and *R. D.* then
 justices and other faithful subjects of the said
 late queen then and there present, between
S. P. spinster plaintiff, and th^t said *W. B.* *Between S. P.*
and p'a. ntiff and

*the said W.B. and M. De-
forceants.* and *M.* his wife deforceants, of the said yearly rent of 4*l.* by the name of the annual rent of 80*s.* issuing of and from one messuage, 20 acres of land, 10 acres of meadow and 20 acres of pasture with the appurtenances in *Kingsnorton* aforesaid. Whereupon a certain plea of covenant was summoned between them in the same court, *to wit*, that the said *W.* and *M.* acknowledged the said rent to belong to her the said *S.* as that which the said *S.* had of the gift of the said *W.* and *M.* and they remised and quit claimed the same from the said *W.* and *M.* and their heirs, to the said *S.* and her heirs for ever. And moreover the said *W.* for himself and his heirs, did grant that he would warrant to the said *S.* and her heirs, the said rent against the said *W.* and his heirs for ever. And likewise the said *W.* and *M.* acknowledged for themselves and the heirs of the said *M.* that they would warrant to the said *S.* and her heirs the said rent against the said *W.* and *M.* and the heirs of the said *M.* for ever. And for this acknowledgment, remission, quit-claim, warrant, fine, and concord, the same *S.* did give to the said *W.* and *M.* 60*l.* sterling; as by the record of the said fine remaining in the court of our lord the now king of the bench here, *to wit*, at *Westminster* aforesaid, manifestly appeareth.

The fine levied Which said fine, so had and levied as afore-
to the use of said, was had and levied to and for the only
the said S. P. proper use and behoof of the said *S.* her heirs
in fee. and assigns for ever. *Whereupon* the said *S.*
S. P. forfeit in became seised of the same yearly rent of 4*l.*
j.c.

in her demesne as of fee; and being so seised ^{Who by will} thereof she the said S. afterwards, ^{acquires it to} *to wit*, on the 11th day of *February* in the year of our Lord 1730, at the parish of *Kingston* afore said made her last will and testament in writing, and thereby gave and devised the said yearly rent of 4*l.* to *H. D.* and his heirs for ever. And afterwards, *to wit* on the same day and year, at the same parish, she, the said S. died so seised of her said estate therein. ^{H. D. seised} Upon whose death the said *H. D.* became seised of the said yearly rent of 4*l.* in ^{of the rent in} his demesne as of fee, by virtue of the said ^{will} devise thereof; and being so seised thereof, he the said *H.* afterwards, *to wit* on the first day of *March* in the year of our Lord 1735, at the same parish died seised of the said yearly rent of 4*l.* in his demesne as of fee. ^{It descended to} Upon whose death the said yearly rent of 4*l.* descended to the said *T. D.* his brother and heir. ^{T. D. as his} By virtue of which said descent thereof, he the said *T. D.* became ^{heir} seised, and still is seised of the said yearly *T. D.* rent of 4*l.* in his demesne as of fee. ^{And as for} because 10*l.* of the said yearly rent for two ^{or rent or} years and a half, ending on the feast of the ^{or mares} annunciation of the blessed virgin *Mary* in ^{or mares} *the year* of our Lord 1742, on that feast ^{of the} were due and in arrear to the said *T. D.* and (although lawfully demanded) at the said ^{time when} time ~~when~~ being after the end of 21 days next after that feast, remained in arrear and unpaid; therefore the said *J. C.* as bailiff of the said *T. D.* well acknowledgeth the taking of the said goods, ~~cattle~~ and chattels,

in the said places in which, &c. and justly, &c. as a distress for the said arrears of the said yearly rent; and this he is ready to verify: Wherefore he prayeth judgment, and a return of the said goods, cattle and chattels, together with his damages, &c. according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

*Bar, that the
fine was levied
to the use of
M. B.*

Traverse.

And the said *J. L.* saith, that the said *J. C.* for any thing by him above alledged in pleading as bailiff of the said *T. D.* ought not to acknowledge the said taking the said goods, cattle and chattels in the said places in which, &c. to be just, because he saith, that the said fine so had and levied as aforesaid was had and levied to and for the only proper use and behoof of the said *M. B.* and her heirs; *Without this*, that the said fine so had and levied as aforesaid was had and levied to and for the only proper use and behoof of the said *S. P.* her heirs and assigns, as the said *J. C.* by his said cognizance hath above alledged; and this the said *J. L.* is ready to verify: Whereupon since the said *J. C.* above acknowledgeth the said taking of the said goods, cattle and chattels, the said *J. L.* prayeth judgment, and his damages on occasion of the said taking and unjust detention of the said goods, cattle and chattels, to be adjudged to him, &c.

Replication.

And the said *J. C.* saith, as before, that the said fine so had and levied as aforesaid, was had and levied to and for the only use and

and behoof of the said *S. P.* her heirs and assigns, as the said *J. C.* by his cognizance has above alledged; and hereupon he putteth himself upon the country; and the said *Issue.*

J. L. doth so likewise: Therefore the sheriff *Venire* is commanded that he cause to come here in *arwarded.* three weeks from the day of the holy *Trinity*, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

And the said *J. S.* by *J. B.* his attorney *Avowry by a* cometh and defendeth the force and injury, *church war-* when, &c. and as church-warden of the said *den, in the* parish of *Christ-church* in the ward aforesaid, *name of a dis-* according to the form of the statute, &c. *tress on the* *Stat. 43 Eliz.* well avoweth the taking of the said goods and chattels in the said place in which, &c. because he saith, that at the said time when, &c. he the said *J. S.* was church-warden of the said parish of *Christ-church* in the ward aforesaid; and that he the said *J. S.* as church-warden as aforesaid at the time, &c. took the said goods and chattels in the said place in which, &c. in the name of a distress, by authority and according to the tenor, purport and effect of a certain statute, made in a parliament of our late sovereign lady *Elizabeth*, queen of *England*, &c. holden at *Westminster* in the county of *Middlesex*, in the 43d year of her reign, and as church-warden, &c. by virtue of the said statute well avoweth the said taking, &c. in the name of a distress, and justly, &c. and this he is ready to verify: Wherefore he prayeth judgment, and that a return of the said goods

and chattels, together with his damages, according to the statute, may be adjudged to him, &c.

Replication. And the said *B.* saith, that the said *J. S.* for the reason before alledged, ought not to well avow the taking the said goods and chattels in the said place in which, &c. because he saith that the said *J. S.* of his own proper injury, and without any such cause by him above mentioned in his avowry, took the said goods and chattels of him the said *B.* in the said place in which, &c. and them unjustly detained against justices and pledges, &c. in the manner and form as be the said *B.* above against him complaineth; and he demands that this may be inquired of by the country: And the said *J. S.* doth the like.

Writ of self judgment. GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To the Sheriff of Middlesex greeting. If *J. P.* shall give you security that his suit shall be prosecuted, then in your full county cause the plaint to be recorded which is in the same county, without our writ, betwene *J. C.* and *J. P.* of the goods and chattels of the said *J. C.* taken and unjustly detained, as it is said, wherein the said *J. P.* complaineth that false judgment hath been given against him in the said county, and that *J. P.* have the said record before our justices *12th November* on the octave of *St. Andrew*, under your seal and the seals of four lawful knights of the same county, of *seven* as main the present at the

Curfitor 2 6
Duty 2 0
Fine 6 8
—

11 2

the

the said record, and summon by good summoners the said J. C. that he be then there to hear the said record; and have you there the summoners, the names of the said four knights, &c. of this writ. Witness Ourself at Westminster, the 17th day of December in the 18th year of our reign.

Burgh.

By the Lord Chancellor of Great Britain,
at the instance of the demandant.

s. d.

Received vi. viii.

S. Hetherington.

Hertfordshire, **S**IR W. P. late of *Bulby Declaration in*
to wit. *replevin.* In the county aforesaid, *1all. Ent. 371.*
knight, was summoned to answer S. T. esq; *3 Lev. 225.*
of a plea, wherefore he took the * cattle of
the said S. and them unjustly detained against
gages and pledges, &c. And whereupon the
said S. by J. W. his attorney, complains that
the said Sir W. on the eighteenth day of May
in the first year of the reign of our love reign
lord James the second now king of England,
&c. at Bulby, in a certain place there called
Marshall Ground, took the cattle of the said
S. ~~thence~~ six and twenty wether sheep, twelve
ewe sheep, and eight lambs, and unjustly de-

Cattle applyed to tithes and carsons. 1) b. lat. 142.

tained them against gages and pledges, until, &c. Wherefore the said S. says that he is injured, and hath damage to the value of ten pounds: and thereupon he brings suit, &c.

Avowry in proprio iure, and recognition as bailiff of the earl of Essex.

And the said Sir W. by R. D. n. attorney, comes and defends the force and injury, when, &c. And the said Sir W. in his own right well avows, and as bailiff of *Algernoon* earl of *Essex* well acknowledges the taking the said cattle in the said place, in which, &c.

The locus in quo, &c. the freehold of defendant and the earl.

And justly, &c. Because he says that the said place, in which, &c. the taking the said cattle is supposed to be done, contains, and at the said time in which the taking of the said cattle is supposed to be done, contained in itself two acres of pasture with the appurtenances in *Butey* afore said, which said two acres of pasture with the appurtenances are, at the said time in which, &c. were the soil and freehold of the said Sir W. and

Took the cattle damage feasant. Bar.

Algernoon earl of *Essex*: And because the said cattle at the said time in which, &c. were in the said two acres of pasture eating the grass then growing in the same, and doing damage there, the said Sir W. in his own proper right well avows, and as bailiff of the said *Algernoon* earl of *Essex*, well acknowledges the taking the said cattle in the said place, in which, &c. And justly, &c. so doing damage there, &c.

Bar.

And the said S. says, that the said Sir W. by the reason before alledged, ought not in his own proper right to avow, and as bailiff of the said earl to acknowledge the taking the said cattle in the said place in which, &c. as just;

just; because he says that the said two acres of pasture in which, &c. are and at the said time in which, &c. and also from the time to the contrary whereof the memory of man is not, *The Locus in quo, &c. Parcel of the manor of B.* parcel of the manor of *Bushey* and of the customary land of the said manor, and also demised and demisable by copy of court-roll of the same manor by the lord or lords of the same, or by his or their steward or the court of the said manor for the time being, to any person or persons willing to take the same in fee-simple or otherwise, at the will of the lord or lords, according to the custom of the said manor: And the said *S.* further says, that the aforesaid earl and Sir *W.* before the said time in which, &c. *Whereof defendant and the earl of Essex are lords.* to wit on the twenty-first day of *April* in the said first year of the reign of our said lord the present king, were lawfully lords of the said manor: And the said earl and Sir *W.* then *And granted the locus in quo, &c. to plaintiff.* being lords of the said manor, afterwards and before the said time in which, &c. to wit, on the same twenty-first day of *April* in the first year aforesaid at a court of the said earl and Sir *W.* of their said manor then held for the said manor within the said manor at *Bushey* aforesaid in the county of *Hertford*, by one *T. S.* gent. then their steward of their said manor, by copy of court-roll of the said manor, granted the said two acres of pasture with the appurtenances, in which &c. *lands and tenements*, to the said *S.* To have and to hold to the said *S.* and his heirs and assigns for ever, at the will of the lords according to the custom of the said manor:

*who was
admitted to
manor.*

manor: And the said S. according to the custom of the said manor was then and there admitted tenant thereof, by virtue of which said grant and admission, the said S. before the time time in which, &c. the said two acres of pasture with the appurtenances in which, &c. among other lands and tenements entered, and was then and there settled thereon in his demesne as of fee-simple and the will of the lords, according to the custom of the said manor: And the said S. being so settled thereof before the said time in which, &c. put his said cattle into the said two acres of pasture in which, &c. to eat the grafs then growing in the same; and the said cattle were in the said two acres of pasture in which, &c. eating the grafs then growing there until the said Sir W. P. on the said eighteenth day of May in the first year above said, at *Bushby*, stole said in the said two acres of pasture called *Marybell Grounds*, in which, &c. took the said cattle of the said S. and unjustly detained them against wages and pledges until, &c. as the said S. above complains against him: And this he is ready to verify: Wherefore for that the said Sir W. P. above acknowledges the taking the said cattle, the said S. prays judgment and his damages by occasion of the taking and unjustly detaining the said cattle, to be adjudged to him, &c.

*Replication.
Counsels that
the locus in
quo, &c. is
part of the
manor of S.*

And the said Sir W. P. says, that we should true it is, that the said two acres of pasture with the appurtenances in which, &c. are, and at the said time in which, &c. and also from the time to the contrary &c. of the memory

mory of man is not, were parcel of the said
 manor of *Bussy* and of the customary land
 of the said manor, and demised and demis-
 sable by copy or court-roll of the said ma-
 nor, by the lord or lords of the said manor,
 or by his or their steward of the court of the
 said manor for the time being, to any per-
 son or persons willing to take the same in
 fee-simple or otherwise, at the will of the
 lord or lords, according to the custom of the
 said manor: And that the said earl and Sir *Thos. fil earl*
W. before the said time in which, &c. to and defendant
 wit, on the said twenty-first day of *April* in were lords,
 the said first year of the reign of our said
 lord the present king, were lawfully lords of
 the said manor: And the said earl and Sir *W.* Granted to
 then being lords of the said manor, after- plaintiff.
 wards and before the said time in which, &c.
 to wit, on the said twenty-first day of *April*
 in the said first year aforesaid, at *London* afore-
 said in the county of *Middlesex* forenoon by
 the said *T. S.* then then steward of the court
 of their said manor, by copy or court roll of
 the said manor, granted them two acres
 of pasture with the appurtenances in which,
 &c. among other lands a demises to the
 said *S.* To have and to hold to the said *S.*
 his heirs and assigns forever, at the will of
 the lords according to the custom of the
 said manor; and that the said *S.* according *If he was ad-*
 to the custom of the said manor then and *mitted tenant.*
 the said *S.* admitted tenant thereof; and that
 by virtue of the said grant and admission,
 the said *S.* before the said time in which,
 &c. into the said two acres of pasture with
 the

*But the lands
of the value of
28l. per ann.*

*And a fine of
35l. was as-
sessed on the
plaintiff.*

the appurtenances in which, &c. among other lands and tenements, entered and was seised thereof in his demesne as of fee, at the will of the lords, according to the custom of the said manor, as the said *S.* above all pleading has alledged: But the said Sir *W. P.* further says, that the said two acres of pasture with the appurtenances in which, &c. together with the other lands and tenements in the said copy mentioned, and by the said copy granted to the said *S.* and his heirs, and to which the said *S.* was as aforesaid admitted, at the said time of the said admission of the said *S.* in the same, were, and yet are, of the clear yearly value of twenty and eight pounds; and that the said earl and Sir *W.* by the said *T. S.* in the said full court of the said manor, held within the said manor on the twenty-first day of *April* in the said first year of the reign of our said lord the present king, the said *T. S.* being then steward of the earl and Sir *W.* then lords of the said manor of the said court of their said manor as aforesaid, after the admission of the said *S. T.* to the said two acres in which, &c. and the said other lands and tenements granted by the said copy to the said *S.* then and there assessed and appointed the sum of thirty and five pounds for a fine for the said grant to the said *S.* of the said two acres of pasture with the appurtenances in which, &c. and of the said other lands and tenements, by the said copy in form aforesaid, to be paid by the said *S.* to the said earl and Sir *W.* being lords of the said manor as aforesaid, upon

on the first day of *May* then next ensuing, at the porch of the church of the parish of *Bushey* aforesaid in the said county of *Hertford*, and that the said *S.* then and there, to wit, at the said manor had notice of all and singular the said premisses: *And* the said Sir *W.* further says, that the said fine for the lands and tenements by the said copy in manner and form aforesaid granted to the said *S.* was a reasonable fine; *And* that the said *S.* *Although* he had notice of the said premisses from the said lords of the said manor at the said court held as aforesaid at the said manor on the said twenty-first day of *April* aforesaid, did not pay to the said earl and Sir *W.* lords of the said manor, or to either of them, the said sum of thirty and five pounds assessed for the said fine in form aforesaid, upon the said first day of *May* then next ensuing the admission of the said *S.* at the said porch of the parochial church of *Bushey* aforesaid; but then and there intirely refused, denied, and still does refuse to pay the said thirty and five pounds to the said earl and Sir *W.* by which the said *S. T.* forfeited to the said earl and Sir *W.* being lords of the said manor, whereof, &c. as aforesaid, all his said customary right, state, title and interest of and in the said two acres of pasture, with the appurtenances in which, &c. and the said other lands and tenements specified in the said writ: After which said forfeiture made in form aforesaid, and before the said time in which, &c. the said earl and Sir *W.* being lords of the said manor as aforesaid, entered

Fine reasonable.

Plaintiff refused to pay it.

Whereby forfeited.

Wheeler and Honor, Raymond 42 Co. Inst. 647. b. Cro. Eliz. Dalton and Hammond 779 Cro. Ja. 617. Gardner and Norman. Defendant and the earl entered.

*And were
seized on fee.*

*Cattle damage
suffered.*

entered into the said two acres of pasture with the appurtenances, in which, &c. and were and yet are seized thereof in their demesne as of fee: And because the said cattle after the said entry, *to wit*, &c. &c. said time in which, &c. were in the said two acres of pasture with the appurtenances, in which, &c. eating the said grass then growing in the same and doing damage there, the said Sir W. as before in his own proper right well avows, and as bailiff of the said curial well acknowledges the taking the said cattle in the said place in which, &c. and justly, &c. to doing damage there, &c. And thus he is ready to verify: Wherefore, as before, he pays judgment, and a return of the said cattle, together with his damages, costs and charges by him about his suit in this behalf expended, according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

Rejoinder.

Protestando

Fine unreasonable.

*Custom that
the fine should
not exceed a
year's value.*

And the said S. protesting that the said sum of thirty and five pounds for the said fine for the lands and tenements granted by the said copy to the said S. in manner and form aforesaid, was not a reasonable fine, as the said Sir W. has above by pleading alledged, For plea the said S. says, that there is, and, from the time to the contrary whereof the memory of man is not, hath been a custom within the said manor, used, and approved within the said manor for the ~~over the time~~ aforesaid, *to wit*, that every person who should be admitted tenant to any customary lands or tenements of the said manor by copy

py of court-roll of the said manor, have been accustomed, and ought to pay to the lord or lords of the said manor for the time being, for a fee: for his admission to such customary lands or tenements, so much money as such lands or tenements were worth by the year at the time of such admission, and not more:

And the said S. in fact says, that the said two *Premises* *worth 28l.* *per annum.*
 acres of pasture, with the appurtenances in which, &c. together with the other lands

and tenements mentioned in the said copy, and by the said copy granted to the said S. and his heirs, and to which the said S. was admitted as aforesaid, at the time of the admission of the said S. to the same were worth, and are yet worth twenty and eight pounds by the year, and not more: *And the said S.*

further says, that at the time of his said admission to the said tenements with the appurtenances, *Which plaintiff tendered.* *to wit,* at the said court of the

said manor held within the said manor on the said twenty-first day of *April* in the first year aforesaid, he the said S. was ready and offered to pay to the said Sir *W.* then one of the lord of the said manor, being then and there present in his own proper person, so much money as the said customary tenements with the appurtenances were worth by the year, at the time of the admission of the said S. to the same, *to wit,* twenty and eight pounds of lawful money of England; which said twenty and eight pounds the said Sir *W.* then and there maturely refused to take or

accept of the said S. *And the S. is ready to verify: Wherefore, as before, he prays judgment,* *And defendant refused.*

judgment, and his damages by occasion of the taking and unjustly detaining the said cattle, to be adjudged to him, &c.

Demurrer.

And the said Sir W. says, that the plea of the said S. above by rejoining pleaded, and the matter therein contained, are not sufficient in law to bar the said Sir W. from having his avowry and cognizance afore said, and that he has no need and is not bound by the law of the land to answer to the said plea pleaded in manner and form afore said: And this he is ready to verify: Wherefore for default of a sufficient plea in this behalf the said Sir W. as before, prays judgment, and a return of the said cattle, together with his damages, costs and charges by him about his suit in this behalf expended, according to the form of the statute in such case lately made and provided, to be adjudged to him, &c. And for cause of demurring in law to the said plea, the said Sir W. according to the form of the statute in such case lately made and provided, shews, and to the court here demonstrates this cause following, to wit, that the value of the land is in estimation, and the said custom by the said S. above in pleading pretended and alledged, is uncertain, insufficient and void in law.

Cause.

Joinder.

And the said S. for that in his said plea above by rejoining pleaded he has above alledged sufficient matter in law to bar the said Sir W. from having his avowry and cognizance afore said, which he is ready to verify, which said matter the said Sir W. does not deny nor any way answer thereto, but intirely

ly refuses to admit the verifying the same, as before, prays judgment, and his damages by occasion of taking and unjustly detaining the said cattle, to be adjudged to him: *And because the said justices here would advise themselves of and upon the premisses before they give judgment thereupon, a day is given to the said parties here until on the octave of St. Hilary, to hear their judgment thereupon; for that the said justices here are not yet, &c.* *Continuance.*

At which day here come as well the said S. as the said Sir W. by their attornies afore- Judgment for the plaintiff.
said: And upon this the premisses being seen, and by the justices here fully understood, it seems to the said justices here, that the said plea of the said S. above by rejoining pleaded, and the matter therein contained, are sufficient in law to bar the said Sir W. from having his avowry and cognizance aforesaid, as the said S. has above alledged; for which the said S. ought to recover against the said Sir W. his damages, by occasion of taking and unjustly detaining the said cattle:

But because it is not known what damages the said S. has sustained by occasion of the taking and unjustly detaining the said cattle, it is commanded to the sheriff, that by the oath of good and lawful men of the county aforesaid, he diligently inquire what damages the said S. has sustained, as well by occasion of the taking and unjustly detaining the said cattle, as for his costs and charges by him about his suit in this behalf expended; and that the sheriff make appear here from the day of Easter in fifteen days the inquisition which *Inquiry awarded.*
he

The return.

he shall make thereupon, under his seal, and the seals, &c. *At which day* the said *S.* comes here by his attorney aforesaid, and the sheriff, *to wit,* ^{now} sends here a certain inquisition taken before him at *Stevenage* in the county aforesaid, on the fifteenth day of *April* last past, by the oath of twelve, &c. by which it is found that the said *S.* sustained damages by occasion of the taking and unjustly detaining the said cattle, besides his costs and charges by him about his suit in this behalf expended, to fourpence, and for those costs and charges to sixpence. *Therefore* it is considered, that the said *S.* recover against the said *Sir W.* his said damages to tenpence, found by the said inquisition in form aforesaid, and also nine pounds five shillings and twopence by the court here adjudged to the said *S.* at his request for his said costs and charges of increase, which said damages in the whole amount to nine pounds and six shillings: *And* the said *Sir W.* in mercy, &c.

Judgment
si nec 3 M. y
2 Jac. 2.

Mercy.

Declaration in Northampton, J. B. was summoned to an-
replevin for a mare taken in the king's br. h way. *to wit,* *J. B. swer S. C. of a plea,*
wherefore he took a mare of the said *S.'s* and unjustly detained her against gages and pledges, &c. *And whereupon* the said *S.* by *W. L.* his attorney, complains, that the said *J.* on the first day of *October* in the twelfth year of the reign of our lord *William* the third late king of *England*, &c. at *Hardingston* in the county aforesaid, in a certain place there called, the king's highway, took a mare

11. Ent. 351
Salk. 3. P. 8.
6 Mod. 102
Pract Reg.
157. Holt
627. 2 R.
Raym. 1016

mare of the said S.'s, and unjustly detained her against gages and pledges until, &c. and whereupon the said S. says that he is injured, and hath damage to the value of 10*l.* and thereupon he brings suit, &c.

And the said J. B. by J. B. his attorney comes and defends the force and injury when, &c. and as bailiff of the right honourable W. lord L. well acknowledges the taking the said mare at the said time in which, &c. in a certain place called the queen's high way, and unjustly, &c. Because he says, that the same place contains, and at the same time in which, &c. contained in itself half a rood of land with the appurtenances in *Hardingston* aforesaid, which said half rood of land long before, and at the said time in which, &c. was parcel of a certain antient messuage in *Hardingston* aforesaid, which said messuage long before and at the said time in which, &c. was the soil and freehold of the said lord L. and because the said mare at the said time in which, &c. was in the said half rood of land in which, &c. doing damage there, the said J. as bailiff of the said W. lord L. well acknowledges the taking the said mare in the said place in which, and justly, &c. doing damage there, *without this*, that the said J. took the said mare in a certain place called the king's highway, as the said S. hath declared against him: And this he is ready to verify: Whereupon he prays judgment, and a return of the said mare to be adjudged to him, &c.

Cognizance as bailiff of lord L.

The locus in quo his freehold.

And the mare there damage-feejaunt.

Traverse not taken in king's highway.

*Replication,
took in the
king's high-
way.*

And the said *S.* says, that the said *J. B.* ought not, as bailiff of the right honorable *W.* lord *L.* to acknowledge the taking the said mare to be just; because he says, that he the said *J. B.* at the said time in which, *&c.* took the said mare in the said place then called the king's highway, in manner and form as the said *S.* above by declaring has alledged: And this he prays may be inquired of by the country.

*Demurrer in
abatement.*

And the said *J.* says, that he has no need, nor is he bound by the law of the land, in any manner to answer to the said plea of the said *S.* above by replying pleaded, because he says, that the said plea is not sufficient in law to maintain his said declaration: And this he is ready to verify: Wherefore for default of a sufficient replication in this behalf the said *J.* as before prays judgment, and that the said declaration may be quashed, *&c.*

Joinder.

And the said *S.* for that he has above alledged sufficient matter in law for him the said *S.* to maintain his action and declaration aforesaid; which he is ready to verify; which said matter the said *J.* does not deny, nor in any manner answer thereto, but has intirely refused to admit the verifying the same; the said *S.* prays judgment, and his damages by occasion of the taking and unjustly detaining the said mare, to be adjudged to him, *&c.* *And because* the justices here would advise of and upon the premises before they give judgment thereupon, a day is given to the said parties here until.

*Continuance by
Court's advice
vult,*

until* from the day of St. Michael in three weeks to hear their judgment thereupon, for that the said justices here are not yet, &c. *At which day* come here as well the said S. *Judgment for* as the said J. by their attornies afore said; *the plaintiff.* and upon this the premisses being seen, and ^{1 Sid. 189,} by the justices here fully understood, it seems ^{190.} to the said justices here that the said plea of ^{1 Ventris} the said S. above by replying pleaded is suf- ^{135, 136.} ficient in law to maintain his said declaration ^{Cro. Eliz.} as the said S. has above alledged; *for which Inquiry a-* the said S. ought to recover his damages by *warded.* occasion of the premisses against the said J. but because it is not known what damages the said S. has sustained by occasion of the premisses, it is commanded to the sheriff, that by the oath of twelve good and lawful men of his county, he diligently inquire what damages the said S. has sustained, as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended; and that the sheriff make appear here the inquisition which he shall thereupon take on the octave of St. Hilary under his seal and the seals, &c. *At The return* which day here comes the said S. by his attorney afore said, and the sheriff, to wit, Sir C. C. bart. now sends here a certain inquisition taken before him at the town of Northampton in the county afore said, on the nineteenth day of January last past, by the oath of twelve, &c. By which it is found,

* No such return. See Vol. 1. p. 63.

Judgment.

that the said S. hath sustained damages by occasion of the premisses, besides his costs and charges by him about his suit in this behalf expended, to 80 s. and for those costs and charges to 2 d. *It is therefore* considered, that the said S. recover against the said J. his damages to 80 s. and 2 d. found by the said inquisition in form aforesaid; and also 12 l. 17 s. 4 d. by the court here adjudged to the said S. at his request for his said costs and charges.

Errors assigned.

Afterwards, to wit, on next after in this same term before our lady the queen at *Westminster* the said J. comes by A. M. his attorney, and says, that in the record and process aforesaid, and also in giving the said judgment, there is manifest error in this, *to wit*, that by the said record it appears, that the said judgment in form aforesaid given was given for the said S. C. against the said J. B. where by the law of the land of this kingdom of *England* judgment in the said plea ought to have been given for the said J. B. against the said S. C. There is also error in this, *to wit*, that by the said record it appears, that the said J. was summoned to answer the said S. of the plea aforesaid, yet no original writ between the parties aforesaid of the plea aforesaid is filed of record, nor remains of record in the said court of our lady the queen of the bench; and therefore in that there is manifest error. *There* is also error in this, *to wit*, that by the said record it appears, that the said S. came and appeared in the said court

No original writ.

No warrant of attorney.

of our said lady the queen of the bench by *W. L.* his attorney, yet the said *W. L.* had no warrant of attorney of record by writ of our lady the present queen, nor without writ, to warrant his appearance for the said *S.* in the plea aforesaid: *And* the said *J.* prays separate writs of our lady the queen, *to wit,* Certiorari - awarded. one to be directed to the chief justice of our said lady the queen of the bench, and the other to the *Custos Brevium* of our said lady the queen of the bench aforesaid, to certify our said lady the present queen the truth thereupon more fully; and it is granted to him, *&c.* Upon which, Tuesday next after the fifteenth day of the Holy Trinity is given by the court of our said lady the present queen here to return to the court of our said lady the queen before the queen herself at *Westminster* the said several writs of *certiorari* above prayed; the same day is given to the said *S.* at the same place, *&c.* Rule to return Certiorari. And the said chief justice of the bench aforesaid, and the said *Custos Brevium* of our said lady the present queen at that day did not send the said several writs, nor did either of them, *&c.* nor did they do any thing thereupon, nor did either of them do any thing thereupon: *And thereupon* the said *S.* freely comes here into court, and says, that there is not any error either in the record and proceedings aforesaid, or in giving the said judgment; and he prays that the court of our said lady the queen now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matter aforesaid. Non miseria.

*In nullo est
erratum.*

Continuance.

Judgment affirmed.

Costs.

faid above assigned for error, and that the faid judgment may be in all things affirmed: *But because* the court of our faid lady the queen now here is not yet advised about giving judgment of and concerning the premisses, day is theretore given to the faid parties to come before our lady the queen until in one month of *Easter*, wheresoever, &c. to hear judgment of and upon the same premisses, for that the court of our faid lady the queen now here is not yet advised thereof. *At which day* before our lady the queen at *Westminster* the faid parties come by their attornies aforesaid: Whereupon the court of our faid lady the queen now here, having seen and fully understood and diligently examined as well the faid record and proceedings, and the judgment thereupon given, as the faid causes and matters above assigned and alledged for error, for that it seems to the court of our faid lady the queen here, that the faid judgment is in nothing vitious or defective, and that there is no error in the faid record; it is considered that the faid judgment be in all things affirmed, and stand in its full force and effect; the faid causes above assigned for error in any wise notwithstanding, &c. *And* it is further considered by the faid court, that the faid *S.* recover against the faid *T.* 12*l.* adjudged by the court of our lady the queen now here to the faid *S.* by his assent, according to the form of the statute thereupon lately made and provided, for his costs, charges and damages which he has sustained by occasion of the

the delay of the execution of the said judgment, by pretence of prosecuting the said writ of our lady the queen for correcting errors of and upon the premisses: And that the said S. thereupon have his execution, &c.

Scire Facias

Common Pleas.

Trinity term in the 10th year of king
George the third.

London, **I**T was commanded to the she- **Scire facias**
to wit, **I**ffs of London, Whereas T. M. by an admini-
lately in the court of the lord James II. late strator de bo-
king of England, (that is to say) in the term nis against
of the Holy Trinity in the second year of his ber at law
reign, before Sir H B. knt. and his com- and tertenants.
panions, then justices of the late king of the
common bench at *Westminster*, by the judg-
ment of the same court had recovered against
T. T. late of the parish of *St. Andrew Hel-*
born in the county of *Middlesex*, esq; as well
a debt of 500*l.* as 90*s.* which were adjudg-
ed in the same court to the said T. M. for
his damages which he had sustained by rea-
son of the detaining of that debt, whereof
he is convicted, as by the record and pro-
ceedings thereof now remaining in the said
court of our present sovereign lord the king,
before his justices at *Westminster* aforesaid,

manifestly appeareth : Nevertheless execution of the judgment aforesaid still remaineth to be made ; and as well the said *T. M.* as the said *T. T.* are dead since the recovering the said judgment, as our said present sovereign lord the king hath received information by *W. S.* administrator of the goods and chattels which were of the said *T. M.* at the time of his death not administered by *A.* late wife of him the said *W. S.* deceased, and *T. M.* her sister also deceased, late executrixes of the testament of the said *T. M.* And his said now majesty being willing, &c. that by good and lawful men they should warn *W. T.* cousin and heir of the said *T. T.* deceased, and the tenants of all the lands and tenements which were of the said *T. T.* on the morrow of the Holy Trinity in the said 2d year of the said late king *James II.* (on which day the judgment aforesaid was given) or at any time afterwarcs, in their bailiwick, that they should be here at this day (that is to say) from the day of *St. Michael* in three weeks, to shew if they have or know of any thing, &c. why the said *W. S.* should not have execution of the debt and damages aforesaid, to be levied of those lands and tenements, according to the form and effect of the recovery aforesaid, &c. if, &c. And now here at this day cometh as well the said *W. S.* by *T. B.* his attorney, as *J. T.* esq; by *C. W.* his attorney ; and the said *W. T.* although on the fourth day of the plea aforesaid he was solemnly demanded, came not ; and the sheriffs, to wit, *W. R.* and *B. R.* esqrs.

The return.

esqs. new return, that by virtue of the said writ to them directed, by J. C. and R. R. good and lawful men of their bailwic, they had warned the said W. T. cousin and heir of the said T. T. and the said J. T. esq; the tenant of 18 messuages with the appurtenances in the parish of *St. Andrew Holborn* in their bailiwick (*to wit*) one of them with the appurtenances then or late in the tenure or occupation of E. M. or her assigns [*the other 17 messuages described in like manner*] which were the lands and tenements of the said T. T. on the day of giving the judgment aforesaid, that they be here on this day (*to wit*) from the day of *St. Michael* in three weeks, to shew as the writ doth require; and the said sheriffs did certify that there were no other tenants, nor was there any other tenant of any other lands or tenements which were his the said T. T.'s on the day of giving the judgment aforesaid, or at any time after, in their bailiwick, whom they could warn: And Letters of administration of all the goods and chattels which were of the said T. M. at the time of his death not administered by the said A. deceased, late wife of the said W. S. and the said T. M. deceased, the executrixes of the testament of the said T. M. after the deaths of the said A. and T. (*to wit*) on the 9th day of *August* in the 10th year of the reign of our late sovereign lord king *George I.* at *London*, in the parish of *St. Mary le Bow* in the ward of *Cheap*, was committed by W. by divine Providence archbishop of C. primate of all

Profert.

all *England* and metropolitan, to him the said *W. S.* and he produceth here in court the letters of administration of the said archbishop, with the testament of the said *T. M.* annexed, which testifieth the commitment of the administration aforesaid to him in form aforesaid, and he prayeth execution of the debt and damages aforesaid against the said *W. T.* to be levied of the lands and tenements which were of the said *T. T.*'s at the aforesaid time of giving the judgment aforesaid, or at any time since, and which descended from the said *T. T.* to the said *W. T.* as his cousin and heir, by his default, and also against the said *T. T.* to be levied of the messuages aforesaid, with the appurtenances, whereof he is returned tenant as aforesaid, to be adjudged to him the said *W. S.*

*Double plea of
tortenant,*

And the said *J. T.* by *C. W.* his attorney cometh and saith, that the said *W. S.* ought not to have execution of the debt and damages aforesaid, against him the said *J. T.* to be levied of the tenements aforesaid, of which he is above returned tenant, because he saith that all the money due upon the said judgment in the said writ mentioned was paid and satisfied by the said *T. T.* to the said *T. M.* in the same writ named, *to wit*, at *London*, in the parish of *St. Mary le Bow* in the ward of *Cheap*; and this he is ready to verify: Wherefore he prayeth judgment if the said *W. S.* ought to have execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the tenements aforesaid, of which he is above returned tenant; and

*That the money on the
judgment was
paid.*

the

the said *T. T.* by force of the statute in that case made and provided, and by leave of the court here granted to him, for a further plea saith, that the said *W. S.* ought not to have execution of the debt and damages aforesaid against the said *J. T.* to be levied of the tenements aforesaid, of which he is above returned tenant as aforesaid, because he saith, that the said *T. T.* on the day when the said judgment in the said writ named was given, or ever after, was not seised of the tenements aforesaid. of which the said *J. T.* is above returned tenant, or of any part thereof, in his demerits of fee; and this he is ready to verify. Wherefore he prayeth judgment if the said *W. S.* ought to have execution against him of the debt and damages aforesaid, to be levied of the said tenements, of which he is above returned tenant as aforesaid, &c.

And that the deft. in the original judgment was not seised in fee of the messuage, &c. in the writ of Scire facias.

Geo. Wilson.

And the said *W. S.* saith, that he by any thing by the said *J. T.* above in pleading alledged ought not to be barred from having execution of the debt and damages aforesaid against the said *J. T.* to be levied of the tenements aforesaid, with the appurtenances, of which he is returned tenant as aforesaid; because as to the plea of the said *J. T.* first above pleaded, he the said *W. S.* saith, that all the money due upon the said judgment in the said writ mentioned was not paid or satisfied by the said *T. T.* to the said *T. M.* in the said writ named, as the said *J. T.* hath above in pleading alledged; and this he prayeth

Replication.

To the first part, that the money was not paid.

prayeth may be inquired by the country; and the said *J. T.* doth likewise the same.

Issue thereon. And as to the plea of the said *J. T.* last
To the second part, above pleaded, he the said *W. S.* saith, that before the said day when the said judgment was given, *to wit,* on the 10th day of *January* in the year of our Lord 1685. the said *T. T.* was seised of the tenements aforesaid with the appurtenances, of which the said *J. T.* is above returned tenant, in his demesne as of fee; and being so seised on the 1st day of *April* in the 2d year of the reign of our lord *James II.* late king of *England*, &c. by one indenture made at the parish of *St. Andrew Holborn* aforesaid, between the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. by their respective names of *T. T.* of the parish of *St. Andrew Holborn, London*, esq; *R. A.* of *Newport Pagnel* in the county of *Bucks*, esq; *T. A.* of *Bedwel Park* in the county of *Hertford*, esq; *E. C.* of *Gray's Inn* in the county of *Middlesex*, esq; and *T. T.* of the parish of *St. Andrew Holborn, London*, gent. and *E. B.* and *J. W.* by their respective names of *E. B.* of *Lincoln's Inn*, in the county of *Middlesex*, esq; and *J. W.* of *Gray's Inn* aforesaid, of the other part; one part of which indenture sealed with the seals of the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. he the said *W. S.* bringeth here into court, the date whereof is the said day and year last above mentioned, he the said *T. T.* esq; for and in consideration of a certain sum of money to him the said *T. T.* esq; by the said *E. B.* and *J. W.* in hand paid, did bargain

That the defendant in the judgment was seised in fee.

And did by lease.

P. Gfert.

bargain and sell, and they the said *R. A. T. A. E. C.* and *T. T.* gent. did ratify and confirm the tenements afore said, whereof the said *J. T.* is returned tenant as afore said with the appurtenances, together with other lands, unto the said *E. B.* and *J. W.* To have and to hold unto the said *E. B.* and *J. W.* their executors, administrators and assigns, from the day next before the day of the date of the said indenture unto the end and term of one year then next following and fully to be complete and ended, as by the said indenture more fully doth appear: by virtue of which bargain and sale, and by force of the statute for transferring of uses into possession made at *Westminster* in the county of *Middlesex*, on the 4th day of *February* in the 27th year of the reign of the lord *Henry VIII.* late king of *England*, &c. the said *E. and B. and J. W.* were possessed of the tenements afore said, whereof the said *J. T.* is so returned tenant, with the appurtenances, for the said term of one year. And the said *E. B.* and *J. W.* being so possessed thereof, and the said *T. T.* esq; being so seised of the reversion thereof in his demesne as of fee, afterwards, to wit, on the 2d day of *April* in the 2d year of the reign of the said lord *James II.* late king of *England*, &c. by one indenture quadriparite made at the said parish of *St. Andrew Holborn* between the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. by their respective names of *T. T.* of the parish of *St. Andrew Holborn, London*, esq; *R. A.* of *New Port Pagnel* in the county of *Bucks*, *T. A.* of *Bedwel Park* in

And release.

Proferat.

Convey.

To make a tenant to the
Præcipe, in
order to suffer
a common recovery.
The uses thereof
declared.

in the county of *Hertford*, esq; *E. C.* of *Gray's Inn* in the county of *Middlesex*, esq; and *T. T.* of the parish of *St. Andrew Holborn, London*, gent. of the first part, the said *E. B.* and *J. W.* by their respective names of *E. B.* of *Lincoln's Inn* in the county of *Middlesex*, esq; and *J. W.* of *Gray's Inn* aforesaid, esq; of the second part, *E. F.* and *G. L.* by their respective names of *E. F.* of *Gray's Inn* aforesaid, esq; and *G. L.* of the *Inner-Temple, London*, esq; of the third part, and *W. F.* by the name of *W. F.* of *Hatton Garden* in the said county of *Middlesex*, esq; of the fourth part, one part of which indenture sealed with the seals of the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. he the said *W. S.* bringeth here into court, the date whereof is the same day and year last above mentioned, he the said *T. T.* esq; did grant, and they the said *R. A. T. A. E. C.* and *T. T.* gent. the reversion of the tenements aforesaid, whereof the said *J. T.* is so returned tenant, with the appurtenances, together with other lands, to the said *E. B.* and *J. W.* and their heirs: To have and to hold unto the said *E. B.* and *J.* their heirs and assigns for ever, to the use of them, their heirs and assigns for ever; To the intent they might become perfect tenants of the freehold of the tenements aforesaid, in order and to the intent that a common recovery thereof might be had and suffered in manner and form in the same indenture specified; And it was declared by the same indenture,

denture, that the said recovery so to be had and suffered, and all and every other recovery or recoveries, conveyances and assurances whatsoever before that time had, levied, suffered or executed, or hereafter to be had, levied, suffered or executed of the tenements aforesaid, whereof the said *J. T.* is returned tenant, with the appurtenances, or any of them, by or between the said parties to the same indenture or any of them, should be and enure, and are by the same indenture declared to be and enure to the use of Sir *R. A.* and *J. B.* of the county of *Cambridge*, esq; and their heirs, during the joint lives of the said *T. T.* esq; and *E.* his wife, and from and after the determination of that estate, to the use of the said Sir *R. A.* and *J. B.* and their heirs, for and during the lives of the said *T. T.* esq; and *E.* his wife, and the life of the longer liver of them; and from and after the decease of the said *T. T.* esq; and *E.* his wife, and of the survivor of them, that then they the said *R. A.* and *J. B.* and their heirs and assigns, should stand and be seised of the tenements aforesaid with the appurtenances, to the use of the first son of the body of the said *T. T.* esq; on the body of the said *E.* begotten, and of the heirs male of the body of such first son issuing; and for default of such issue, then to the use of the second, third, fourth, fifth, sixth, seventh, and all and every other son and sons of the body of the said *T. T.* esq; on the body of the said *E.* begotten, severally, successively,

sively, and in remainder, one after another, as they should be in priority of birth, and of the heirs male of the body and bodies of every such son and sons issuing; the elder of such sons and the heirs male of his body issuing to take before the younger of such sons and the heirs male of his body issuing; and for default of such issue, to the use of the said Sir R. A. and J. B. their executors, administrators and assigns, for the term of 500 years, without impeachment of waste, in which indenture is contained a proviso, that if the said J. T. esq; should happen to die without any issue female of his body on the body of the said E. begotten, or without leaving the said E. with child of one or more daughter or daughters that should be born alive; that then the estate so limited to the said Sir R. A. and J. B. for 500 years, should cease, determine, and be utterly void, as by the said indenture, amongst other things, more fully doth appear. By virtue whereof the said E. B. and J. W. were seised of the tenements aforesaid, whereof the said J. T. is so returned tenant, with the appurtenances, in their demesne as of fee; and being so seised, afterwards pursuant to the said indenture quadripartite, *to wit*, on the 12th day of *February* in the 2d year of the reign of the said lord James II. late king of *England*, &c. the said E. F. and G. L. prosecuted out of the court of the said late king James II. of his chancery at *Westminster* aforesaid, a certain writ of the said late king of entry upon a disseisin in the *post* against the said E. B.

and

Recovery.

Writ of entry.

and *J. W.* then tenants of the freehold of 60 messuages with the appurtenances in the parishes of *St. Andrew Holborn* and *St. Dunstan in the West*, of which the tenements, aforesaid with the appurtenances, whereof the said *J. T.* is returned tenant as aforesaid, were parcel, to the then sheriffs of *London* directed, by which writ the said late king commanded the said late sheriffs of *London* that they should command the said *E. B.* and *J. W.* that justly and without delay they should render to the said *E. F.* and *G. L.* the said 60 messuages with the appurtenances, which they the said *E. F.* and *G. L.* claimed to be their right and inheritance, and into which they the said *E. B.* and *J. W.* had not then entry, but after a disseisin which *H. H.* thereof unjustly and without judgment had made of them the said *E. F.* and *G. L.* within 30 years then last past, as they then said; and whereupon they then complained, that the said *E. B.* and *J. W.* then deforced them there; and unless they did so, and that the said *E. F.* and *G. L.* should make the said then sheriffs secure of prosecuting their claim, then they should summon by good summoners the said *E. B.* and *J. W.* to be before the justices of the said late king here, *to wit*, at *Westminster* aforesaid, from the day of *Easter* in 15 days then next following, to shew wherefore they did not; and that the said then sheriffs should have there the summoners, and that writ: At which said 15th day from the day of *Easter*, Parties appeared before Sir *H. B.* knight, and his companions, then justices of the said late king of the

bench here, came as well the said *E. F.* and *G. L.* as the said *E. B.* and *J. W.* in their proper persons, and *B. T.* and *T. K.* knights, then sheriffs of *London* aforesaid, then and

Writ returned. there returned the said writ to them in form aforesaid directed, in all things served and executed, *to wit*, that the said *E. F.* and *G. L.* had found to the said sheriffs pledges of prosecuting the said writ, *to wit*, *John Doe* and *Richard Roe*; and that the said *E. B.* and *J. W.* were summoned by *J. D.* and

Count. *R. F.* And thereupon the said *E. F.* and *G. L.* in their proper persons declared against the said *E. B.* and *J. W.* then tenants of the freehold of the said 60 messuages with the appurtenances, of which the tenements aforesaid with the appurtenances, whereof the said *J. T.* is returned tenant as aforesaid, then were parcel, and demanded against the said *E. B.* and *J. W.* the said 60 messuages with the appurtenances, as their right and inheritance, and into which the said *E. B.* and *J. W.* had no entry, but after a disseisin which *H. H.* thereof unjustly and without judgment made of them the said *E. F.* and *G. L.* within 30 years, &c. And whereupon they said, that they were seised of the said 60 messuages with the appurtenances in their demesne as of fee and right in the time of peace in the time of the then lord the king, by taking the profits thereof to the value, &c. And into which, &c. And thereof

Tenant vouch- they then brought suit, &c. And the said
as over. *E. B.* and *J. W.* in their proper persons then came and defended their right, when,
&c.

Et. And thereupon vouched to warranty
 the said T. T. esq; who was then likewise
 present in the same court in his proper per-
 son, and did freely warrant to them the said
 messuages with their appurtenances; and
 thereupon the said E. F. and G. L. did de- *Count against*
 mand against him the said T. tenant by his *first vouchee.*
 warranty the messuages aforesaid with the ap-
 purtenances, in form aforesaid; and where-
 upon they then said, that they were seised of
 the messuages aforesaid with the appurte-
 nances in their demesne as of fee and right,
 in the time of peace in the time of the then
 lord the king, by taking the profits thereof
 to the value, Et. and into which, Et. and
 thereof they then brought suit, Et. And *First vouchee*
 the said T. T. tenant by his warranty then *vouches over.*
 and there defended his right, when, Et.
 and thereupon further voucheth to warranty
 J. W. who was then likewise present in the
 same court in his proper person, and did
 freely warrant to him the said messuages with
 their appurtenances, Et. And thereupon *Count against*
 the said E. F. and G. did demand against *common*
 him the said J. W. tenant by his warranty the *vouchee.*
 messuages aforesaid with the appurtenances
 in form aforesaid, Et. And whereupon they
 then said, that they were seised of the mes-
 suages aforesaid, with the appurtenances, in
 their demesne as of fee and right in the time
 of peace, in the time of the then lord the
 king, by taking the profits thereof to the
 value, Et. and into which, Et. and there-
 of they then brought suit, Et. And the *Common*
 said J. W. tenant by his warranty then de- *vouchee; leads,*
 fended

fended his right, when, &c. And he then said, that the said *H. H.* did not disseise the said *E. F.* and *G.* of the messuages aforesaid, with the appurtenances, as they the said *E. F.* and *G.* by their writ and count aforesaid had above supposed; and of this he then put himself upon the country, &c. and the said *E. F.* and *G.* then prayed leave to imparl thereto, and had it, &c. And afterwards they the said *E. F.* and *G.* came again into the same court here in that same term in their proper persons: And the said *J. W.* altho' he was solemnly demanded, did not return, but departed in despite of the court, and made default; therefore it was then and there considered by the same court, that the said *E. F.* and *G.* should recover their seisin against the said *E. B.* and *J. W.* of the messuages aforesaid, with the appurtenances; and that the said *E. B.* and *J. W.* should have of the land of the said *T. T.* to the value, &c. and that the said *T. T.* moreover should have of the land of the said *J. W.* to the value, &c. and that the said *J. W.* should be in mercy, &c. And thereupon the said *E. F.* and *G.* then prayed the writ of the then said lord the king to the then sheriffs of *London* aforesaid to be directed, to make plenary seisin to him of the messuages aforesaid, with the appurtenances; and it was granted to him returnable here, on the morrow of the ascension of our Lord: At which day came here the said *E. F.* and *G.* in their proper persons; and the said then sheriffs of *London*, to wit, *B. T.* and *J. K.*

•knts.

Imparlance.

*Common
voucher makes
default.*

*Judgment
against the
tenant.*

*Against first
voucher.*

*Against com-
mon voucher.*

Writ of seisin.

knts returned, that they by virtue of that writ to them directed, did on the 1st day of *May* then last past make full seisin to them the said *E. F.* and *G. L.* of the messuages aforesaid, with the appurtenances, as by the said writ was commanded to them, &c. as by the said record and process thereof remaining here in court more fully it doth appear. Which recovery, and the execution thereof in form aforesaid had, were had as to the tenements aforesaid, with the appurtenances, whereof the said *J. T.* is returned tenant as aforesaid, to the uses in the said indenture quadripartite herein before specified, and to no other use. And the said *W. S.* further saith, that the said *T. T.* never had any issue male or female of his body on the body of the said *E.* his wife begotten born alive. And the said *W. S.* further saith, that the said *E.* before the day of the suing forth of the aforesaid writ of *Scire Facias*, to wit, on the 1st day of *July* in the year of our Lord 1769, at the parish of *St. Andrew Holborn* aforesaid died; and this the said *W. S.* is ready to verify: Wherefore he prayeth judgment, and his execution of the debt and damages aforesaid against the said *J. T.* of the aforesaid tenements, with the appurtenances, of which he is returned tenant as aforesaid, to be adjudged to him the said *W. S.* &c.

Joseph Sayer.

And the said *J. T.* saith, that the repli- *De murrer.*
cation aforesaid of the said *W. S.* to the plea

of the said *J. T.* last above pleaded, and the matter therein contained are not sufficient in law for the said *W. S.* to have execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the said tenements of which he is above returned tenant as aforesaid, to which said replication in manner and form above pleaded the said *J. T.* hath no need nor is he obliged by the law of the land to answer; and this he is ready to verify: Wherefore for want of a sufficient replication in his behalf, the said *J. T.* prayeth judgment, and that the said *W. S.* may be barred from having execution against him of the debt and damages aforesaid to be levied of the said tenements of which he is above returned tenant as aforesaid, &c.

Geo. Wilson.

Joinder

And the said *W. S.* forasmuch as he hath alledged sufficient matter in law in his replication aforesaid to the aforesaid plea of the said *J. T.* last above pleaded, to have execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the aforesaid tenements, whereof he the said *J. T.* is above returned tenant as aforesaid, which he is ready to verify, which said matter the said *J. T.* doth not gainsay, nor in any wise answer thereto, but doth wholly refuse to admit the said replication, as before prayeth judgment and execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the tenements aforesaid, whereof
 †
 he

he is above returned tenant as aforesaid, to be adjudged to him. *John Belfield.*

To the King's most Excellent Majesty.

The humble memorial of T. earl of E. deputy (with your majesty's approbation) to G. duke of N. earl marshal and hereditary marshal of England,

Sheweth,

THAT his late majesty king George I. *A memorial to his majesty for a Scire Facias to repeal letters patent.* was graciously pleased by his letters patent, bearing date the 18th day of June in the 6th year of his reign, to constitute and appoint J. W. esq; *Somerſet* herald of arms during him his good behaviour;

That the said J. W. *Somerſet* herald, hath for a courſe of many years laſt paſt abſented himſelf from his duty of attending your majesty and your majesty's late royal father at court and parliament;

That the college of arms have been greatly injured by the ſaid J. W.'s receiving fees without doing the duties incumbent on the ſaid office, or accounting and paying his proportion towards the incident charges thereof;

That the ſaid J. W. hath likewiſe preſumed to publiſh the arms of the nobility and gentry of *England* in the margins of maps he hath lately publiſhed, without leave of the crown or conſent of the officers of arms, whoſe rights and intereſts are thereby invaded.

Scire Facias.

Your memorialist therefore hereby submits the premisses to your majesty's royal consideration, and prays your majesty will be graciously pleased to issue your royal warrant to your majesty's attorney general, thereby authorising and directing him to cause a *Scire facias* to be sued out in your majesty's name, for repealing the said letters patent of the said *J. W. Somerset* herald, for such his misdemeanors and neglect of duty, he being (as your memorialist most humbly conceives) unworthy to continue longer in your majesty's service.

And your memorialist

shall ever pray.

Effingham M.

Whitehall, June 18, 1777.

His majesty is graciously pleased to refer this memorial to Mr. attorney or Mr. solicitor general to consider thereof, and report his opinion, what his majesty may fitly do therein. Whereupon his majesty will declare his further pleasure.

Francis North.

George R.

*As sent for
LRO
J.
et.*

WHEREAS our right trusty and well beloved cousin *T. earl of Effingham*, Deputy (with our approbation) to our right trusty and right intirely beloved
cousin

cousin C. duke of N. earl marshal, and hereditary marshal of *England*, has by his memorial humbly represented unto us, that our late royal Father was graciously pleased by his letters patent, bearing date the 18th day of *June* in the 6th year of his reign, to constitute and appoint *J. W.* esq; *Somerset* herald of arms, during his good behaviour; that the said *J. W.* has for a course of many years last past absented himself from his duty of attending us and our late royal father at court and parliament; that the college of arms have been greatly injured by the said *J. W.*'s receiving fees without doing the duties incumbent on the said office, or accounting and paying his proportion towards the incident charges thereof; that the said *J. W.* has likewise presumed to publish the arms of the nobility and gentry of *England* in the margins of maps he has lately published, without our leave or consent of the officers of arms, whose rights and interests the memorial states were thereby invaded; the memorialist therefore prays that we would be graciously pleased to issue our royal warrants to you our attorney general, thereby authorising and directing you to cause a *Scire Facias* to be sued out in our name for repealing the said letters patent of the said *J. W.* for such his misdemeanors and neglect of duty, and as unworthy to continue longer in our service: And whereas we having referred the said memorial to you or our solicitor general; our said solicitor general by his report thereupon has humbly

, cerused

certified us, that upon receipt of the said memorial he caused notice thereof and a copy to be sent to the said *J. W.* and he has been attended by the solicitor of the memorialist and the said *J. W.* and also by *J. W.* himself, and upon considering the affidavits and arguments on both sides, our said solicitor general is humbly of opinion that the said *J. W.* has been guilty of great neglect of duty, for which he is liable to have a *Scire facias* brought in our name in order to repeal his patent, unless we shall be graciously pleased to accept of his excuses, and not put him to undergo a trial. But as it may be necessary with regard to many offices where no deputy can be made, and personal attendance is required, that they should be given to understand that such neglects of duty are not to be slightly passed over: And as the said *J. W.* will have an opportunity of making his defence upon a trial, and even after a conviction it will still be in our power to suspend the entering of any judgment to vacate the patent; he humbly conceives it may be fitting for us to order a *Scias Facias* to be brought to repeal the said *J. W.*'s patent; and for that purpose to issue our royal warrant to you, authorizing and directing you to cause such *Scire facias* to be sued out, if we shall be pleased so to do. We taking the premisses into our royal consideration are graciously pleased to condescend thereunto. Our will and pleasure therefore is, that you sue out and prosecute a writ of *Scire facias* in our name, for re-

pealing the said *J. W.*'s patent. And we do hereby authorise and require you to do and perform all matters and things that may be requisite and necessary in that behalf; and for so doing this shall be your warrant. Given at our court at *Kensington* the 7th day of *September* 1777, and in the 17th year of our reign. *By his majesty's command.*

*To our trusty and
well beloved our
attorney general.*

Francis North.

A draught of the *Scire facias* is to be prepared, and the attorney signs under it as follows:

Let there be a writ of *Scire facias* issued according to the tenor within mentioned dated this 23d day of *October* 1777. *Attorney general's Fiat.*
E. Thurlow.

The attorney general's fee is 2 l. 2 s. 0 d.
His clerk's — — — 0 l. 13 s. 4 d.

GEORGE the Third, by the grace of *Scire facias*
God, of *Great Britain, France, and Ireland,* to revoke let-
king, defender of the faith, &c. To the *ters patent*
sheriff of *Middlesex* greeting. *Whereas* our *granted of the*
late royal grandfather by his letters patent *office of Somers-*
under his great seal of *Great Britain,* bearing *let herald.*
date at *Westminster* the 20th day of *June* in *Recital of the*
the 6th year of his reign, did of his special *letters patent.*
grace, and of his certain knowledge and
mere motion, for himself his heirs and suc-
cessors, make, nominate and create, erect,
confli-

constitute and invest *J. W.* of *B.* in his county of *York*, esq; one of his heralds at arms, and gave him that name commonly called *Somerjet*; and by the same letters patent gave and granted the stile, title, liberties and preheminences, with such office convenient and agreeing of ancient time accustomed, which said office *S. S.* esq; otherwise *Somerjet*, then deceased, then lately had and enjoyed, To have and exercise the said office, and the name, stile, title, liberties and preheminences aforesaid, to the said *J. W.* otherwise *Somerjet*, as long as he should behave himself well in the same office. And further, our said late royal father did by his said letters patent, for himself, his heirs and successors, grant to the said *J. W.* for the exercise of the said office, a certain annuity or annual rent of 40 marks of good and lawful money of *Great Britain*, to be had and received by the said *J. W.* otherwise *Somerjet*, yearly, as long as he should behave himself well in the same office, from the treasurer of our said late royal father, his heirs and successors, at the receipt of his *Exchequer*, by the hands of the commissioners for his treasury, or the treasurer and chamberlain of our said late royal father, his heirs and successors, there for the time being, at the feast of *St. Michael* the archangel, and of the annunciation of the blessed virgin *Mary*, by equal portions; the first payment thereof to begin from the feast of *St. Michael* the archangel then last past, together with all other rights, fees, profits, advantages

vantages and emoluments whatsoever, to the same office due and accustomed, in as ample manner and form as *J. P. esq; Somerset, Sir T. St. G. knt. Somerset, F. B. esq; Somerset*, or the said *S. S. Somerset*, or any other or others of the heralds of our said late royal father, called *Somerset*, then lately had and received for the exercise of the said office, as by the said letters patent inrolled in our Chancery more fully appears: *And whereas* Assignment of breach of duty in non attendance. the said *J. W. Somerset* at divers times within the space of 13 years last past was required by the duty of his said office, and ought personally to have attended the business and service thereof; *and whereas* we are given to understand, that the said *J. W. Somerset* for the time last mentioned hath not personally attended the business and service of his said office, but hath absented himself therefrom, and neglected the duty thereof, in contempt of us and to our prejudice; whereby the said *J. W. Somerset* hath incurred the forfeiture of his said office, and of all his right, title and interest therein: Nevertheless we being willing to have further and more certain information of and concerning the truth of the said premisses, and that right and justice should be done therein, do command you that by good and lawful men of your bailiwick you make known to the said *J. W. Somerset*, that he be before us in our chancery aforesaid in one month from the day of *St. Michael* next to come, wheresoever it then shall be, to shew if he hath or knoweth any thing to say why
 the

Scire facias.

the said letters patent and the inolment thereof, for the reasons aforesaid, ought not to be cancelled, vacated and annulled, and restored to us in our chancery, there to be cancelled, and further to do and receive concerning the premisses whatsoever the said court shall consider in this behalf; and have you there the names of those by whom you shall so cause it to be so made known to him. and this writ. Witness *John* archbishop of C. and other guardians and justices of the kingdom at *Westminster* the 11th day of *October* in the 14th year of our reign.

Verney. Asketon.

Label.

To the sheriff of *Middlesex*. *Scire facias* to revoke letters patent granted to *J. W.* esq;

Verney. Asketon.

The within named *J. W. Somerset*, hath not any thing in my bailiwick, where or by which I can give him notice, as by this writ I am commanded, nor is the said *J. W. Somerset* found in the same.

The answer of

<i>Henry Marshal</i> , esq;	} Sheriff.
and	
<i>Richard Hoare</i> , esq;	

Testatum
Sci' fa'.

GEORGE the Third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *Northamptonshire*, greeting: Whereas (*ut antea* to) and that right and justice should

should be done therein, by our writ to our sheriff of the county of *Middlesex* we lately commanded him, that by (to) and that he should have there the names of those by whom he should so cause it to be made known to him, and our said writ; at which day in our said writ contained, our said sheriff of *Middlesex* aforesaid, *to wit*, *H. M. esq*; and *R. H. esq*; returned to us in our chancery aforesaid, that the said *J. W. Somerset*, had not any thing in his bailiwick where or by which he could give him notice, as by the said writ he was commanded, nor was the said *J. W. Somerset* found in the same, as by the return thereof, on the file of our chancery remaining on record, doth more fully appear: Whereupon it is sufficiently testified before us in our chancery aforesaid, that the said *J. W. Somerset* hath sufficient in your bailiwick where or by which you may make it known to him: Therefore we command you, that by good and lawful men of your bailiwick you make known to the said *J. W. Somerset*, that he be before us in our chancery aforesaid in eight days of *St. Martin* next to come, whereloever we shall then be, to shew if he hath or knows any thing to say why (to) shall consider in this behalf; and have you the names of those by whom you shall so cause it to be made known to him, and this writ. Witness Ourself at *Westminster* the 30th day of *October* in the 9th year of our reign.

Tierney. Given.

GEORGE,

Sci. fac. for
executors to
revive a judg-
ment obtain'd
by their testa-
tor.

GEORGE, &c. To the sheriff of *Bucks* greeting: Whereas *J. D.* lately in our court, to wit, in the term of *St. Hilary* in the 9th year of our reign, before *Alexander Denton*, esq; *Sir John Fortescue Aland*, knt. and *Thomas Reeve*, esq; then our justices of the bench at *Westminster*, by the consideration of the same court recovered against *J. B.* late of *Chipping-Wycombe* in your county, innholder, otherwise called *J. B.* late of *Chipping-Wycombe* in the county of *Bucks*, innholder, as well a certain debt of 590*l.* as 50*s.* which to the said *J. D.* in our same court were adjudged for his damages which he had by reason of detaining that debt, whereof he is convicted, as by the record and proceedings thereof remaining in our same court manifestly appeareth; yet execution of that judgment still remaineth to be made, and the said *J. D.* is dead, as we have been informed by *W. C.* and *T. B.* executors of the testament and last will of the said *J. D.* And because we will that those things which are rightly done in our same court be duly put in execution, we command you, that by honest and lawful men of your bailiwick you give notice to the said *J. B.* that he be before our justices at *Westminster* from the day of the Holy Trinity in three weeks, to shew if he hath or knoweth any thing to say for himself why the said *W.* and *T.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the recovery aforesaid, if to him it shall seem meet: And have you there

there the names of them by whom you shall give him notice, and this writ. Witness, &c.

It was commanded the sheriff, that where- as J. D. lately in the court of the lord the now king before Alexander Denton, esq; Sir John Fortescue Aland, knt. and Thomas Reeve, esq; then justices of him the lord the king of the bench here, to wit, at Westminster, by the consideration of the same court had recovered against J. B. late of Chipping-Wycombe in the county of Bucks, inn-holder, otherwise called J. B. of Chipping-Wycombe in the county of Bucks, inn-holder, as well a certain debt of 500 l. as 50 s. which to the said J. D. in the same court of our said lord the king were adjudged for his damages which he had by reason of detaining that debt, whereof he is convicted, as by the record, and proceedings thereof in the same court of the said lord the now king here, to wit, at Westminster afore said remaining, manifestly appeareth; yet execution of the judgment afore said still remaineth to be made, and the said J. D. is dead, as the king hath been informed by W. C. and T. B. executors of the testament and last will of the said J. D. and because, &c. that by honest, &c. the said sheriff caused the said J. B. to know that he should be here at this day, to wit, from the day of the Holy Trinity in three weeks, to shew if any thing, &c. why the afore said W. C. and T. B. ought not to have execution against him for the debt and damages afore said, according to the form of

*Entry thereof
on the rolls.*

the recovery aforesaid; if, &c. And now here this day came the aforesaid *W. C.* and *T. B.* by *T. W.* their attorney, and presented themselves the fourth day against the aforesaid *J. B.* in the plea aforesaid; and he being solemnly required, did not come; and the now sheriff hath returned that he had nothing, &c. nor is to be found, &c. Therefore it is considered, that the aforesaid *W. C.* and *T. B.* have execution against the aforesaid *J. B.* of the debt and damages aforesaid by default, &c.

Trin. 10 & 11 Geo. 2. Roll 659.

Scire facias
in case, where
one of the pls.
married after
judgment.

GEORGE the second, &c. To the sheriffs of *London* greeting: *Whereas M. B.* and *G. B.* lately, to wit, in *Hilary* term in the 13th year of our reign, before Sir *John Willes*, knt. and his companions, then our justices of the bench at *Westminster*, by the consideration of that court recovered against *J. B.* late of, &c. 75*l.* for their damages which they had on occasion of the not performing certain promises and undertakings to the said *M.* and *G.* then lately made by the said *J.* at *L.* whereof he is convicted, as by the record and proceedings thereof remaining in our said court of the bench is manifestly apparent: And whereas the said *M.* after the recovery of the damages aforesaid, to wit, on the 1st day of *March* in the year of our Lord 1739, at *London* aforesaid, took to her husband one *P. S.* And altho' judgment

judgment is rendered in form aforesaid, yet execution of the said judgment still resteth to be made to them the said *P. M.* and *G.* as we have received information from the said *P. M.* and *G.* and because we are willing that such things as are rightly done in our said court should meet with a due execution; we command you that by honest and lawful men of your bailiwick, you cause it to be made known to the said *J.* that he be before our justices at *W.* in eight days of the Holy Trinity, to shew if he hath or knoweth any thing to say for himself why the said *P. M.* and *G.* ought not to have execution against him for the damages aforesaid, according to the form and effect of the said recovery, if it shall seem expedient to him; and have you there the names of them by whom you shall cause it to be made known to him, and this, writ. Witness Sir *John Hilles*, kn. at *Westminster*, the 19th day of *May* in the 13th year of our reign.

Correc.

Devonshire, **T**HE sheriff was commanded to wit, ed, that whereas *E. P.* clerk, and *R. F.* the younger, gentleman, lately, that is to say, in the term of the Holy Trinity in the tenth year of his present majesty's reign, in his said majesty's court of the bench here, by the consideration of the same court had recovered against *R. C.* late of, &c. clerk, as well a certain debt of 250*l.* as also 50*s.* which in the same court were adjudged to the said *E. P.* and *R. F.* for

their damages, which they had sustained by reason of the detaining the said debt, whereof he is convicted, as by the record and process thereof remaining in the same court manifestly appeareth: And whereas the said *E.* afterwards died, and the said *R. F.* survived him; nevertheless execution of the said judgment yet remaineth to be made, as the king hath been informed by the said *R. F.* and because, &c. that by honest, &c. he should make known to the said *R. C.* that he should be here at this day, *to wit*, on the morrow of the ascension of our Lord, to shew if any thing, &c. why the said *R. F.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the said recovery, if, &c. And now at this day the said *R. F.* cometh here in his proper person, and offereth himself the fourth day against the said *R. C.* in the plea aforesaid; and he, though solemnly called, cometh not; *Return Nihil.* and the sheriff now returneth, that he hath nothing, &c. nor is to be found, &c. therefore it is considered, that the said *R. F.* have execution against the said *R. C.* for the debt and damages aforesaid, by default, &c.

Scire facias on a recognizance of bail in debt. *GEORGE* the third, &c. To the sheriff of *Middlesex*, greeting. Whereas *W. N.* late of, &c. and *W. W.* late of, &c. lately, that is to say, in the term of *Easter* in the 17th year of our reign, in our court of common pleas, before Sir *William De Grey*, knight, and his companions, our justices of our said court of common pleas at *Westminster*

Item, acknowledged, and each of them did acknowledge to owe to *J. M.* the sum of 80*l.* which said sum of 80*l.* they the said *W. N.* and *W. W.* for themselves and their heirs willed and granted, and each of them for himself and his heirs did will and grant, to be made of the lands and chattels of each of them, and to be levied to the use and behoof of the said *J.* And whereas also *A. A.* late of, &c. otherwise called, &c. the same term, before the same justices in our said court acknowledged himself to owe to the said *J.* the sum of 160*l.* which said sum of 160*l.* the said *A.* for himself and his heirs, willed and granted to be made of his lands and chattels, and to be levied to the use and behoof of the said *J.* under this condition, that if judgment should happen to be given in our said court for the said *J.* against the said *A.* in a certain plea of debt upon demand 200*l.* by the said *J.* against the said *A.* in our said court brought, then the said *A.* should satisfy as well the said debt of 200*l.* as also all the damages which to the said *J.* against the said *A.* in our said court by occasion of detaining the said debt should be adjudged, or render his body on that occasion to our prison of the *Chet*; and altho' the said *J.* in the term of the Holy Trinity in the 18th year of our reign, before the afore-said Sir *William De Grey*, knight, and his companions, our justices of our said court of common pleas at *Westminster*, by the consideration of the same court recovered against the said *A.* as well the said debt

of 200*l.* as also 15*l.* which to the said *J.* against the said *A.* in our same court were awarded for his damages which he had by occasion of detaining the said debt, whereof he is convicted, as by the record and proceedings thereof in our said court now remaining manifestly appeareth: Nevertheless the said *A.* hath not satisfied the said *J.* for the debt and damages aforesaid, nor rendered his body to our said prison upon the occasion aforesaid, according to the form of the said recognizance, as we have been given to understand by the information of the said *J.* And because we are willing that those things which are rightly done and acknowledged in our said court, should be brought to a due execution, we command you, that by honest and lawful men of your bailiwick you make known to the said *W. N.* and *W. W.* and *A. A.* that they be before our justices at *Westminster* on the morrow of *All Souls*, to shew if they know of or have any thing to say for themselves, that is to say, the said *W. N.* why the said 80*l.* by him in form aforesaid acknowledged should not be made upon his lands and chattels, the said *W. W.* why the said 80*l.* by him in form aforesaid acknowledged should not be made upon his lands and chattels, and the said *A. A.* why the said 160*l.* by him in form aforesaid acknowledged, should not be made of his lands and chattels, to the use and behoof of the said *J.* to be levied according to the form of the said recognizance, if to them it shall seem expedient: And have you

you there the names of those by whom you shall give such notice, and this writ. Witness Sir William De Grey, knt. at Westminster, the 10th day of November in the 19th year of our reign.

Easter 6 Ann. Ro. 336.

London, *I*T was commanded to the mayor, *Entry of a recognizance of bail on a Habeas corpus cum causa.* aldermen and sheriffs of London, that immediately after the receipt of this writ they should have the body of *I. S.* detained as it was said in the prison of the lady the queen under their custody, by whatsoever name the said *I.* should be called in the same, together with the day and cause of *The Habeas Corpus.* the taking and detaining of the said *I.* before Sir Thomas Trevor, knt. chief justice of the said lady the queen of the bench, at his chamber in the Inner Temple, London, to do and receive all and singular those things which the said chief justice should then and there consider of him in that behalf: And that they should have there that writ, &c. *The return.* Afterwards, to wit, on the 19th day of February in the year of our Lord 1706, the said *I.* came in his proper person, under the custody of the said sheriffs, by virtue of the said writ, and the said sheriffs, namely Sir A. C. knt. and Sir W. B. knt. now return, that the execution of the said writ appeareth in a certain schedule annexed to that writ, the tenor of which said schedule followeth in these words: We Sir A. C. knt. and Sir W. B. knt. sheriffs of the city of London afore-

D d 4

said

said, certify to Sir *Thomas Trevor*, knt. chief justice of the lady the queen of the bench, &c. named in the writ annexed to this schedule. that before the coming of the said writ to us, *to wit*, on the 28th day of *January* in the 5th year of the reign of our lady *Anne*, by the grace of God, of *England, Scotland, France*, and *Ireland*, queen, defender of the faith, &c. *I. S.* named in the said writ, was taken at *London* aforesaid, and detained in the prison of the said lady the queen under our custody, by virtue of a certain plaint levied in the court of the said lady the queen held on the day and year aforesaid, before me the said Sir *A. C.* knt. one of the sheriffs of the city aforesaid, against the said *I.* by the name of, &c. at the suit of *E. S.* in a plea of debt upon demand of 40*l.* whereupon the said parties have pleaded to an issue of the country, and so it dependeth undetermined; and this is the cause of the taking and detaining of the said *I. S.* whose body

Recognizance. we have ready. *Afterwards*, to wit, on the said 19th day of *February* in the year of our Lord 1706, aforesaid, before *Robert Tracey*, esq; one of the justices of the court here, at his chamber situate in *Serjeants Inn* in *Fleet-street*, came the said *I.* and *E. W.* of *Staple's Inn, London*, gent. and *M. J.* of *Fetter-Lane, London*, gent. in their proper persons, and undertook, and each of them undertook, *to wit*, the said *I.* in the sum of 80*l.* and the said *E.* and *M.* for themselves separately in the sum of 40*l.* that the said *I.* should appear here in his proper person, or by

by his attorney sufficient in the law, to the action or writ of the said *E.* of and upon the cause aforesaid, before the end of two terms then next following, to be sued out and prosecuted in the same term here, and to answer to the said *E.* in the plea aforesaid; and also if it should happen that judgment after the appearance of the said *I.* made in the court here should be given for the said *E.* to satisfy the said *E.* of the debt to be recovered or adjudged against the said *I.* in the plea aforesaid, or that he the said *I.* should render himself on that occasion to the prison of the said lady the queen of the *Fleet*, which said sum of 80*l.* acknowledged by the said *I.* in form aforesaid, the said *I.* acknowledged to be made of his lands and chattels; and which said sum of 40*l.* separately acknowledged by the said *E.* and *M.* in form aforesaid, the said *E.* and *M.* and each of them separately acknowledged to be made of their lands and chattels, and to be levied to the use and behoof of the said *E.* in form aforesaid, if it should happen that the said *I.* should make default in any of the premises, and be convicted thereof in lawful manner: *Which* said recognizance the said justice afterwards, to wit, on the 30th day of *April* in this same term, by his own proper hands delivered here into court to be enrolled of record,
Et c.

ANNE, &c. To the sheriff of *Middlesex* greeting. *Whereas* *I. S. E. W.* of *London*, gent. and *M. J.* of *London*, gent. on the 19th day of *February* in the year of our

Scire facias on
 a recognizance
 of bail upon a
 Habeas Corpus cum cau-

Lord 1706. before *Robert Tracy*, esq; one of the justices of our court of the bench, at his chambers situate in *Serjeants Inn* in *Fleet-street*, *London*, in their proper persons undertook, and each of them undertook, to wit, the said *I.* in the sum of 80*l.* and the said *E.* and *M.* for themselves separately in the sum of 40*l.* that the said *I.* should appear in our court before our justices at *Westminster* in his proper person, or by his attorney sufficient in the law, to the action or writ of one *E. S.* against him the said *J.* of a plea of debt upon demand 40*l.* to be sued out and prosecuted in our same court before the end of two terms then next following, and to answer to the said *E.* in the plea aforesaid; and also if it should happen that judgment after the appearance of the said *I.* made in the same court should be given for the said *E.* then to satisfy the said *E.* of the debt and damages to be recovered or adjudged against the said *I.* in the plea aforesaid, or that he the said *I.* should render himself on that occasion to our prison of the *Fleet*, which said sum of 80*l.* acknowledged by the said *I.* in form aforesaid, the said *I.* acknowledged to be made of his lands and chattels, and which said sum of 40*l.* separately acknowledged by the said *E.* and *M.* in form aforesaid, the said *E.* and *M.* and each of them separately acknowledged to be made of their lands and chattels, and to be levied to the use and behoof of the said *E.* if it should happen that the said *I.* should make default in any of the premises, and
be

be hereof lawfully convicted: *Which said Recognizance*
 recognizance the same justice afterwards, *to wit,* on the 30th day of *April* in the sixth
inrolled.
 year of our reign, by his own proper hand
 delivered into the said court, to be inrolled
 of record, and it is inrolled there, as by the
 record thereof remaining in our same court
 manifestly appeareth of record; *And altho'*
 the said *E.* before the end of two terms next
 after the said time of the said recognizance
 made in form aforesaid, *to wit,* on the 23d
 day of *May* in the 6th year of our reign,
 sued out our certain original writ of and
 upon the said plea, out of our court of chan-
 cery, the same court being at *Westminster* in
 our country of *Middlesex*, against the said *I.*
 returnable and returned in our court before
 our justices at *Westminster* on the morrow of
 the Holy *Trinity* then next following; to
 which said original writ sued out and prose-
 cuted by the said *E.* in form aforesaid, the
 said *I.* by *J. C.* then his attorney, appeared
 in our same court before our justices at *West-*
minster, according to the form of the said re-
 cognizance, and in the same plea in our said
 court pleaded to issue; and in such manner
 it was proceeded thereupon in our same
 court before our justices at *Westminster*, that
 afterwards, *to wit,* in the term of the Holy
Trinity in the 6th year of our reign, before
 Sir *Thomas Trevor*, knt. and his companions,
 our justices of the bench aforesaid, the said
E. by the consideration of the same court re-
 covered against the said *I.* as well the said
 debt of 40*l.* as———, which then were
 adjudged

adjudged to the said *E.* in our same court for her damages which she then had by occasion of the detaining that debt, whereof he is convicted, as manifestly appeareth by the record and process therein remaining in our court before our justices at *Westminster* :

Breach.

Nevertheless the said *I.* hath not yet satisfied the said *E.* of the debt and damages aforesaid recovered in form aforesaid, nor hath he yet rendered his body in execution of the said judgment to our prison of the *Fleet*, according to the form and effect of the said recognizance, as we have been informed by the said *E.* And because we would that those things, which in our said court are rightly acted, should be demanded by a due execution ; *We command* you, that by good and lawful men of your bailiwick you make known to the said *I. E.* and *M.* that they be before our justices at *Westminster* on the octave of *St. Hilary*, to shew if any thing they have or know to say for themselves, *to wit*, the said *I.* why the said 80 *l.* by him in form aforesaid acknowledged, of his lands and chattels, and the said *E.* why the said 40 *l.* acknowledged by him in form aforesaid, of his lands and chattels, and also the said *M.* why the said 40 *l.* also acknowledged by him in form aforesaid, of his lands and chattels, ought not to be made and levied to the use and behoof of the said *E.* according to the form of the said recognizance, if it shall seem expedient to them, and have there the names
of

of them by whom you shall make known to them, and this writ. Witness, &c.

GEORGE III. by the grace of God, of *Scire facias by Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *administrat* *against bail,* *Middlesex* greeting. Whereas *J. S.* late of *after judgment* *Forster Lane, London*, painter-stainer, and *10r.* *W. W.* the younger, late of the *Bank Side Southwark*, iron-founder, lately, that is to say, in the term of *St. Hilary* in the 3d year of our reign, in our court of common pleas, before *Sir R. E. knt.* and his companions, then our justices of our said court of common pleas at *Westminster*, acknowledged, and each of them did acknowledge to owe to *G. S.* the younger, by the name of *G. S.* the sum of 200*l.* which said sum of 200*l.* they the said *J. S.* and *W. W.* for themselves and their heirs willed and granted, and each of them for himself and his heirs did will and grant to be made of the lands and chattels of each of them, and to be levied to the use and behoof of the said *G. S.* upon this condition, That if judgment should happen to be given in our said court for the said *G. S.* against *K. E.* late of *Westminster* in your county, esq; in a plea of trespass upon the case upon promise, to the damage of the said *G.* of 120*l.* by the said *G. S.* against the said *K.* in our said court brought, then the said *K.* should satisfy the said *G. S.* all the damages which to the said *G. S.* in our said court in the said plea of trespass upon the case should be adjudged, or should render his

his body on that occasion to our prison of the *Fleet*. And although the said *G. S.* in the same term before the aforesaid Sir *R. E.* knt. and his companions, then our justices of our said court of common pleas at *Westminster*, by the consideration of our said court recovered against the said *K.* 115*l.* 10*s.* which to the said *G.* in our said court were adjudged for his damages which he sustained on occasion of the said trespass on the case aforesaid, and whereof he is convicted, as by the record and proceedings thereupon, which in our court before us by virtue of our writ to correct errors brought by the said *K.* of and concerning the premises, we lately caused to be brought in our court before us, and which in our court before us now remaining in all things affirmed may manifestly appear. And whereas the said *G.* afterwards, *to wit*, the 16th day of *March* in the year of our Lord 1730. at *Westminster* aforesaid, died intestate, and after whose death administration of all and singular the goods and chattels, rights and credits which were the said *G.*'s at the time of his death, by *W.* by divine Providence archbishop of *Canterbury*, primate of all *England* and metropolitan, on the 6th day of *April* in the year of our Lord 1731. at *London* in due form of law was committed to *G. S.* father of the said *G. S.* the younger; as on the information of the said *G. S.* the father, we have been given to understand. And whereupon in our said court before us it was lately considered, That the aforesaid *G. S.* the father might have his execution against the
said

ſaid K. for the damages aforeſaid ; yet the ſaid K. hath not ſatiſfied the ſaid G. S. the younger, in his life time, nor the ſaid G. the father, ſince the death of the ſaid G. the younger, the damages aforeſaid ; neither hath the ſaid K. ſurrendered his body on that occaſion to the priſon of the *Fleet*, as on the information of the ſaid G. S. the father, we are given to underſtand. And becauſe we are willing that thoſe things which in like manner are required, and in our ſaid court are rightly done, ſhould be brought to a due execution, We command you, that by honeſt and lawful men of your bailiwick you make known to the ſaid J. S. and W. W. that they may be before our juſtices at *Weſtminſter* on the morrow of the aſcenſion of our Lord, to ſhew if any thing they know of or have to ſay for themſelves, that is to ſay, the ſaid J. S. why the ſaid 200 l. by him in form aforeſaid acknowledged, ſhould not be made upon his lands and chattels, and the ſaid W. W. the younger, why the ſaid 200 l. by him in form aforeſaid acknowledged, ſhould not be made upon his lands and chattels and be levied according to the form of the ſaid recognizance, if to them it ſeems expedient. And have you there the names of them by whom to them you give ſuch notice, and this writ. Witneſs.

GEORGE III. by the grace of God, Scire facias
king of Great Britain, France, and Ireland, against bail.
defender of the faith, &c. To the sheriff of
Middlesex greeting. Whereas F. S. late of,
 &c.

Et. F. F. late of, *Et. and T. P.* late of, *Et.* lately in our court, *to wit*, in the term of the Holy *Trinity* in the year of our reign, before Sir *R. E.* knt. and his companions our justices of the bench at *Westminster*, acknowledged, and each of them did acknowledge to owe to *E. P.* and *W. F.* the sum of 38*l.* which said sum of 38*l.* they the said *T. S. F.* and *T. P.* for themselves and their heirs, willed and granted, and each of them for himself and his heirs did will and grant to be made of their and of each of their lands and chattels, and to be levied to the use and behoof of the said *E.* and *W.* upon this condition, that if judgment should happen to be given in our said court for the aforesaid *E.* and *W.* against *T. T.* late of, *Et.* in a certain plea of trespass on the case to the damage of the said *E.* and *W.* of 30*l.* prosecuted by the said *E.* and *W.* against the said *T. T.* in our said court; Then the said *T. T.* should satisfy all damages which should be adjudged to the said *E.* and *W.* in our said court, against the said *T. T.* in the plea aforesaid, or should render his body on that occasion to the prison of the *Fleet*. And although the said *E.* and *W.* in the term of in the year of our reign, before the said Sir *R. E.* knt. and his companions, our justices of the bench at *Westminster* aforesaid, by the consideration of the said court recovered against the said *T. T.* 30*l.* which we e adjudged to the said *E.* and *W.* in our said court, for their damages which they had by occasion of the said trespass,

The whole damage and costs as taxed.

pals,

pass on the case whereof he is convicted, as by the said record and proceedings therein in our said court remaining, plainly appeareth; yet the said *T. T.* has not satisfied the said damages to the said *E.* and *W.* nor rendered his body, on the occasion aforesaid, to the prison of the *Fleet*, according to the form of the said recognizance, as from the information of the said *E.* and *W.* we are given to understand. And because we will that those things which in our said court are rightly acted and acknowledged be duly executed, We command you that by good and lawful men of your bailiwick you make known to the said *F. S. R.* and *T. P.* that they be before our justices at *Westminster* on the morrow of the purification of the blessed virgin *Mary*, to shew if any thing they have for themselves, or know to say, *to wit*, the said *J. S.* wherefore the said 38 *l.* by him in form aforesaid acknowledged, ought not to be made of his land and chattels; the said *R.* wherefore the said 38 *l.* by him in form aforesaid acknowledged, ought not to be made of his lands and chattels, and the said *T. P.* why the said 35 *l.* by him in form aforesaid ought not to be made of his lands and chattels, and levied to the use and behoof of the said *E.* and *W.* according to the form of the said recognizance, if to them it shall seem expedient; and have you there the names of them by whom you shall make it known unto them, and this writ. Witness Sir *William De Grey*, knt. the 23d of *January* in the year of our reign.

De Grey.

Trespass.

Declaration in trespass for breaking the plaintiff's house, assaulting and lying with his wife. Postea 419.

Middlesex, *M.* B. late of, &c. was attached to wit, *M.* ed to answer *J. S.* of a plea, wherefore he broke and entered the house of the said *J. S.* at the parish of St. *James Westminster* in the county of *M.* aforesaid, and then and there with force and arms, made an assault on *E.* the wife of the said *J.* and then and there beat, wounded and ill-treated, carnally knew and committed adultery with the said *E.* and did other injuries to him, to the great damage of the said *J.* and against the peace of our lord the present king, &c. And whereupon the said *J.* by *A. B.* his attorney complaineth that the said *M.* on the 6th day of *October* in the seventeenth year of the reign of our sovereign lord *George III.* now king of *Great Britain*, &c. and at divers other days and times between the said 6th day of *October* and the second day of *March* then next following, at the parish of St. *James Westminster* in the county of *M.* aforesaid, with force and arms broke and entered the house of the said *J.* and with force and arms made an assault on *E.* the wife of the said *J.* and then and there beat, wounded, ill-treated and committed adultery with the said *E.* whereby the said *J.* for the whole time aforesaid there intirely lost the comfort, love and affection of the said *E.* his wife, and then and there did other injuries to the said *J.* to the great damage of the said *J.* and

and against the peace of our said lord the king: Wherefore the said J. saith, that he is injured, and hath damage to the value of 1000 l. and thereof he bringeth suit, &c.

Trin. 17 Geo. 3.

Dorsetshire, **B**E it remembered, that on the 20th day of April in Easter of a declaration against an attorney.
 Memorandum
 term in the 16th year of the reign of our lord the king that now is, R. W. Dr. of phyfic, came here by J. S. his attorney, and exhibited to the justices of our lord the king of the bench here, his bill against W. B. gent. one of the attornies of the court of our said lord the king of the bench here, present here in court in his proper person, the tenor of which said bill followeth in these words, *to wit, To the justices of the lord the king of the bench, Dorsetshire, R. W. Dr. of phyfic, by J. S. his attorney complaineth of W. B. gent. one of the attornies of the court of the lord the king of the bench, present here in court in his proper person, for that the said W. on the 11th day of May in the year of our Lord 1777, and at diverse other days and times between that day and the 1st day of May in the year of our Lord 1778, with force and arms made an assault upon M. the wife of the said R. W. at S. in the said county, and her the said M. then and there ravished, embraced and carnally*
Bill against an attorney of C. B. in a plea of trespass and assault for criminal conversation with the plaintiff's wife.

nally knew, whereby the said *R.* loft and was deprived of the comfort and society of his said wife, and other injuries did to him, to the great damage of the said *R. W.* and against the peace of our lord the present king, &c. Wherefore the said *R.* saith that he is injured, and hath sustained damage to the value of 1000 *l.* and thereupon he prayeth remedy, &c. Pledges for prosecuting, to wit, *J. D.* and *R. R.*

Pledges.

Imparlarce.

And the said *W. B.* in his proper person cometh and defendeth the force and injury when, &c. and prayeth leave to imparle thereto here, until *Friday* next after the morrow of the *Holy Trinity*; and he hath it, &c. The same day is given to the said *R. W.* here, &c. At which day cometh here as well the said *R. W.* by his said attorney, as the said *W. B.* in his proper person. And the said *R. W.* requireth that the said *W. B.* may answer his said bill, &c. And the said *W. B.* in his proper person defendeth the force and injury when, &c. And saith that he is in nothing guilty of the premisses above laid to his charge, as the said *R. W.* above complaineth against him; and of this he putteth himself upon the country; And the said *R. W.* likewise. Therefore the sheriff is commanded, that he cause to come here on *Wednesday* next after three weeks of the *Holy Trinity*, twelve, &c. By whom, &c. Who neither, &c. To recognize, &c. Because as well, &c.

Plea, Not guilty.

Issue.
Venue awarded.

Re-iteration in trespafs, for breaking plain-

Middlesex, to wit, *G. F.* late of, &c. was attached to answer unto *M. B.* spinster, in a plea,

plea, why he the said G. with force and arms *tiff's house,*
the house of the said M. at the parish of *carrying there*
—— in the county aforesaid, did break *and carrying*
and enter, and there without the leave, and *away her*
against the will of the said M. a long time *goods.*
continued, and the goods and chattels of the
said M. there lately found to the value of 10 l.
did take, seise, carry away, and to his own
proper use convert and dispose, and other
wrongs to the said M. did, to the great da-
mage of the said M. and against the peace of
our lord the now king, &c. And whereup-
on the said M. by W. W. her attorney com-
plaineth, *That* the said G. with force and
arms, &c. on the day of in
the year of the reign of George II.
king of Great Britain, &c. the house of the
said M. at the parish aforesaid in the county
aforesaid, did break and enter, and there
without the leave and against the will of the
said M. continued a long time (*to wit*) for
the space of 24 hours, and the goods and
chattels, *to wit*, one feather bed, &c. of the
said M. there lately found, to the value of
the aforesaid 10 l. did take, seise, carry a-
way, and to his own proper use convert and
dispose; and other wrongs, &c. to the great
damage, &c. and against the peace, &c.
Whereupon the said M. saith that she is in-
jured, and hath damage to the value of 10 l.
and thereof she bringeth suit, &c.

Oxfordshire, to wit, M. F. late of, &c. *Declaration in*
was attached to answer to S. S. of a plea, *treplein, for*
wherefore he the said M. with force and *breaching plain-*
arms the close of the said S. in the parish of *tiff's close,*
treading down
Waterperry the grasse, &c.

laid specially.
C. B.

Waterperry in the said county of O. broke and entered, and the grafs late growing there to the value of 5*l.* trod down and consumed with his feet and the feet of his servants, by his and their walking thereon, and other grafs late growing there of the said S. to the value of 5*l.* trod down and consumed with horses, oxen, cows and hogs, and other grafs of the said S. late growing there, to the value of 5*l.* with carts and carriages trod down and consumed, and the earth and soil thereof tore up and plowed, and six cart-loads of flooded grafs laid down, unloaded and placed in the said close of the said S. and permitted the said flooded grafs to continue there for a long time, and also another close of the said S. in the parish aforesaid broke and entered, and the grafs there late growing to the value of 10*l.* with his feet and the feet of his servants, by his and their walking thereon, and with horses and dogs, by hunting in the said close, trod down and consumed; and the hedges, fences, gates and ditches of the said S. late being there, to the value of 10*l.* broke down, destroyed, laid to the ground and filled up; and did him other wrongs to the great damage of the said S. and against the peace of our sovereign lord the king. *And* whereupon the said S. by *E. R.* his attorney complaineth, *That* the said *M.* on the 20th day of *July* in the year of our Lord 1776, at the parish of *W.* in the said county of O. with force and arms broke and entered a close of the said S. containing ten acres, called *Hoghill*, in the said parish.

parish of *W.* and the grafs of the said *S.* late growing there, to the value, &c. trod down and consumed with his feet and the feet of his servants, by his and their walking thereon, and fed on, trod down and consumed the said grafs with horses, oxen, cows and hogs, and other grafs of the said *S.* late growing there, to the value, &c. with carts and carriages trod down and consumed, and the earth and soil thereof then and there tore and plowed up with the said carts and carriages, and six cart-loads of flooded grafs then and there laid down, unloaded and placed, and permitted the same grafs so laid down and placed, to continue in the said close for the space of one month from thence following, and also continuing the said trespass as *Continuando*, to the said treading down, consuming and feeding on the grafs, and also tearing and plowing up the earth and soil of the said close, at diverse days and times from the said 20th day of *July* in the year aforesaid to the 20th day of *October* following; and also that he the said *M.* on the 1st day of *April* in the year of our Lord 1773, at the parish of *W.* aforesaid, broke and entered another close of the said *S.* there being, called the *Ewe ground*, and the grafs of the said *S.* then late growing there, to the value, &c. trod down and consumed with his feet and the feet of his servants, by his and their walking thereon, and also with horses and dogs, by their running thereon, in his the said *M.* and his servants then and there hunting with the said horses and dogs in the

Continuatio.

faid last mentioned close, and then and there broke down and destroyed by the said hunting of the said M. and his servants, with the said horses and dogs, the hedges, fences, gates and ditches of the said S. then and there, *to wit*, 20 perches of hedges and 20 perches of fences, and 20 perches of ditches, and five gates then and there being, of the value, &c. then and there broke, destroyed, laid to the ground, and filled up, continuing the said last mentioned trespass at divers days and times from the said 1st day of *April* in the said year of our Lord 1773, to the day of the issuing forth of the original writ of the said S. and then and there did him other wrongs, &c. to the great damage, &c. against the peace, &c. whereupon the said S. declareth he is injured and damaged to the value of *10*l.** and thereof he bringeth suit, &c.

*Plea as to
fact not
guilty.*

And the said M. by H. H. his attorney cometh and defendeth the force and injury wherof, &c. *And as to* the coming with force and arms, and whatever is against the peace of his said majesty, and all the said trespass above supposed to be done, except the breaking and entering of the said close called *Hog-*Lee**, in which, &c. and the treading down and consuming of the grass aforesaid there growing with his feet and the feet of his servants, by walking thereon, and the feeding on, treading down and consuming the grass aforesaid there growing with the said horses, and the treading down and consuming other the grass there growing with the
said

saïd carts and carriages, and the tearing and plowing up with the saïd carts and carriages the earth and soil aforesaid there, saith that he is not guilty thereof as the saïd S. hath above complained against him; and thereupon he putteth himself upon the country; *Issue.*

and the saïd S. doth so likewise: *And as to the breaking and entering the saïd close called Hogbill, in which, &c. and the treading down and consuming of the grass aforesaid there growing with his feet and with the feet of his servants, by walking thereon, and the feeding on, treading down, and consuming the grass aforesaid there growing with the saïd horses, and the treading and consuming other the grass aforesaid there growing with the saïd carts and carriages, and the tearing and plowing up with the saïd carts and carriages the earth and soil aforesaid there, the saïd M. saith that the saïd S. ought not therefore to have his saïd action against him, because he saith, that the saïd close called Hogbill, in which the saïd trespass is above supposed to be done, at the saïd time when, &c. was and is a piece of meadow containing 10 acres, parcel of a certain common meadow called Hloghill in the parish of W. aforesaid. And the saïd M. further saith, that long before the saïd time when, &c. E. R. esq; was seised in his demelne as of fee as well of the saïd close in which, &c. parcel, &c. as of another parcel of the saïd common meadow containing by estimation two acres, with the appurtenances, at one and the same time; and being*

As to the residue, that the locus in quo, &c. was parcel of common meadow, that E. R. long before, &c. was seised in fee of the locus in quo, &c. and of another parcel of ground in the same meadow, to which he had no way but over the locus in quo, &c. that E. R. demised the said other parcel of ground to the deft. who therefore justifies in using his way to the fime, doing as little damage as he could.

ing so seised thereof, the said *E.* had not any way to the said parcel of the said meadow containing two acres, except from *W.* aforesaid in the county of *B.* through and over the said close in which, *Ec.* parcel, *Ec.* into the said parcel of the said meadow containing by estimation two acres, and back again from that parcel of the said meadow into, through and over the said close in which, *Ec.* to *W.* aforesaid, for the use and enjoyment of the said parcel of the said meadow containing by estimation two acres; and the said *E.* being so seised of the said parcel of the said meadow containing by estimation two acres, with the appurtenances, as aforesaid, he the said *E.* not then having any way to the said parcel of the said meadow containing two acres except from *W.* aforesaid in the said county of *B.* through and over the said close, in which, *Ec.* parcel, *Ec.* into the parcel of the said meadow containing by estimation two acres, and back again from that parcel of the said meadow into, through and over the said close in which, *Ec.* to *W.* aforesaid, for the use and enjoyment of the said parcel of the said meadow containing by estimation two acres, before the said time when, *Ec. to wit*, on the 26th day of *March* in the year of our Lord 1736, aforesaid, at the parish aforesaid, demitted to the said *M.* the said parcel of the said common meadow containing by estimation two acres, with the appurtenances. To have and to hold to the said *M.* from thence at the will of the said *E.* and *M.* by virtue of

of which said demise the said *M.* entered into the said parcel of the said meadow so demised to him as aforesaid, with the appurtenances, and has been from thenceforth hitherto possessed thereof, and being so possessed, he the said *M.* of necessity had and ought to have a way from *W.* aforesaid into, through and over the said close in which, &c. parcel, &c. into his said parcel of his said meadow, and back again from his said parcel of his said meadow into, through and over the said close in which, &c. parcel, &c. to *W.* aforesaid, for the necessary use and enjoyment of the said parcel of the said common meadow; and therefore he the said *M.* at the said several times when, &c. went with his said carts and carriages in the said declaration mentioned, drawn by his said horses therein also mentioned, in the said way from *W.* aforesaid into, through and over the said close in which, &c. parcel, &c. into his said parcel of the said meadow, and back again from his said parcel of the said meadow into, through and over the said close in which, &c. parcel, &c. for the fetching, taking and carrying of the hay and grass of the said *M.* growing, arising and made in his said parcel of the said common meadow, with his said horses, carts and carriages, by himself and his said servants in the said way, as it was lawful for him; and in so doing he the said *M.* and his said servants necessarily trod down and consumed with their feet in walking in the said way a little of the grass aforesaid, then growing in the said close in which

which, &c. parcel, &c. and the said horses of the said *M.* in their passing in the said way through the said close in which, &c. parcel, &c. for the cause aforesaid, against the will of the said *M.* did snatch and eat, and necessarily trod down and consumed a little of the grass aforesaid there growing, doing as little damage as might be; and the said *M.* did necessarily in using his said way tread down and consume on that occasion a little other grass there growing with the said carts and carriages, and tore and plowed up with his said carts and carriages on that occasion the earth and soil aforesaid there, doing as little damage there on that occasion as he could; *which are the breaking and entering of the said close called Hogbill in which, &c. and the treading down and consuming of the grass aforesaid there growing with his feet and the feet of his servants, by walking thereon, and the feeding on, treading down and consuming the grass aforesaid there growing with the said horses, and the treading down and consuming other the grass aforesaid there growing with the said carts and carriages, and the tearing and plowing up with the said carts and carriages the earth and soil aforesaid there, of which the said S. hath above complained against him; and this he is ready to verify: Wherefore he prayeth judgment if the said S. ought therefore to have his said action against him, &c.*

And the said S. as to the ~~said breaking and entering~~ of the said close called Hogbill, in which, &c. and the treading down and con-

consuming of the grafs aforesaid there growing, with his feet and the feet of his servants by walking thereon, and the feeding on, treading down and consuming the grafs aforesaid there growing with the said horses, and the treading down and consuming other the grafs aforesaid there growing with the said carts and carriages, and the tearing and plowing up with the said carts and carriages the earth and soil aforesaid there, *replyeth*, that he ought not to be precluded from having his said action to be maintained against the said *M.* for the same, by any thing above pleaded by him thereto, *because* he the said *S.* saith, that the said *M.* at the said time in which, &c. at the parish of *W.* aforesaid, broke and entered the said close called *Moghill*, in which, &c. and the said grafs of the said *S.* late growing there, trod down and consumed with his feet and the feet of his servants, by his and their walking thereon, and fed on, trod down and consumed the said grafs with the said horses, and the said other grafs of the said *S.* late growing there, with carts and carriages trod down and consumed, and the earth and soil thereof then and there tore and plowed up with the said carts and carriages, of his own wrong, without such cause by him the said *M.* above in his said plea alledged; and this the said *S.* prayeth may be inquired of by the country; and the said *M.* doth so likewise. Therefore the sheriff is commanded, that he cause to come here from the day of the holy *Trinity* in three weeks, 12, &c.

Ijur.
Venire
awarded.
 and

and who neither, &c. to recognize, &c. because as well &c.

Declaration in trespass for entering ple's free chase and free warren, hunting and killing game, &c. Cumberland, **F** late of, &c. was attached to wit, **F** to answer to **W. H.** in a plea wherefore he with force and arms entered into the free chase of the said **W.** at **M.** in the county aforesaid, and without his licence and consent in the same did hunt, and did take, kill and carry away hares, conies, pheasants and partridges; and also wherefore he with force and arms entered into the free warren of the said **W.** at **M.** aforesaid. and without his licence and consent there did hunt and take, kill and carry away other hares, conies, pheasants and partridges, and other injuries to him did, to the great damage of the said **W.** and against the peace of our lord the king; and whereupon the said **W.** by **T. B.** his attorney complaineth, that the aforesaid **F.** on the — day of — in the — year of the reign of his present majesty, and on divers other days and times between that day and the 1st day of *March* in the — year of the reign of his said majesty, with force and arms, &c. entered into the free chase of the said **W.** at **M.** aforesaid, and without his licence and consent did in the same hunt, and did take, kill and carry away hares, to wit, 20 hares, conies, to wit, 40 conies, pheasants, to wit, 20 pheasants, and partridges, to wit, 2 partridges; and also that the said **F.** on the said several days and times aforesaid, with force and arms, &c. entered into the free warren of
of

of the said *W.* at *M.* aforesaid, and without his licence and consent there did hunt, and did take, kill and carry away other hares, *to wit*, 20 other hares, conies, *to wit*, 40 other conies, pheasants, *to wit*, 20 other pheasants, partridges, *to wit*, 20 other partridges; and other injuries, &c. to the great damage, &c. and against the peace, &c. whereupon the said *W.* saith, that he is prejudiced, and hath received damage to the value of 20 *l.* and thereof he bringeth suit, &c.

Oxfordshire, } *T. H.* late of, &c. was at- *Declaration*
to wit, } *T. B.* attached to answer *T. B.* of *in trespass for*
a plea, *wherefore* with force and arms he *cutting down*
the trees of the said *T. B.* at *C.* aforesaid *pit's trees,*
growing to the value of 30 *l.* felled and cut *carrying away*
down, and the timber and wood therefrom *the timber,*
&c.
coming and arising took, carried away and converted to his own proper use, and the underwood and bushes of him the said *T. B.* at *C.* aforesaid growing, of the value of other 30 *l.* cut down and carried away, and other enormities to him did, to the great damage of the said *T. B.* and against the peace of our lord the now king, &c. *And*
whereupon the said *T. B.* by *R. F.* his attorney complaineth, *That* the said *T. H.* on the 1st day of *January* in the year of our Lord 1772, and on several other days and at several other times between that day and the 23d day of *April* in the year of our Lord 1777, with force of arms, &c. the trees of him the said *T. B.* *to wit*, 100 oaks, 100 ashes, 100 elms, 100 beeches, and 100 maples,

maples, growing in several closes, called *K. P. B. &c.* at *C.* aforesaid, to the value, *&c.* felled and cut down, and the timber and wood, (*to wit*, 200 cart-loads of timber, and 200 cart-loads of wood) therefrom coming and arising, took, carried away, and converted to his own proper use, and the underwood and bushes of him the said *T. B.* (*to wit*, 200 cart-loads of underwood and 200 cart-loads of bushes) growing in the said closes, of the value, *&c.* cut down and carried away; and other enormities, *&c.* to the grievous damage, *&c.* and against the peace, *&c.* whereby the said *T. B.* saith, he is detrimented and hath sustained damage to the value of 40*l.* and thereof he bringeth this suit, *&c.*

*Declaration
in trespass
for shooting a
greyhound, &c.*

Leicestershire, } *H. R.* late of, *&c.* was at-
to wit, } tached to answer *B. D.*
in a plea, wherefore with force and arms, a
certain greyhound bitch, and a certain other
bitch of the said *B.* of the price of 10*l.* at
M. aforesaid in *M.* aforesaid in the county
aforesaid, with a gun he shot at and killed,
whereby the said *B.* not only lost the said
bitches, but also certain young whelps, *to
wit*, five young whelps of the said grey-
hound bitch, and certain young whelps, *to
wit*, five young whelps of the said other
bitch, which died for want of the said bitches
to suckle them, *to wit*, at *M.* aforesaid, and
a certain other greyhound bitch, and a cer-
tain other bitch of the said *B.* late found at
M. aforesaid, of the price of 10*l.* he shot
at,

at, hit, struck, smote and wounded, by means whereof the last mentioned two bitches afterwards at *M.* aforesaid died, whereby the said *B.* not only lost the said two last mentioned bitches, but also certain other young whelps, *to wit*, five other young whelps of the said last mentioned greyhound bitch, and certain other young whelps, *to wit*, five other young whelps of the other of the two last mentioned bitches, which afterwards died for want of the two last mentioned bitches to suckle them, *to wit* at *M.* aforesaid, and did other wrongs to the said *B.* to the great damage of the said *B.* and against the peace of our sovereign lord the king that now is, &c. *And whereupon* the said *B.* by *J. B.* his attorney complaineth, *that* the said *H.* on the 15th day of *January* in the year of our Lord 1776. with force and arms, &c. a certain greyhound bitch and a certain other bitch of the said *B.* of the price of 10*l.* then found at *M.* aforesaid, with a gun he shot at and killed, whereby the said *B.* not only lost the said bitches, but also certain young whelps, *to wit*, five young whelps of the said greyhound bitch, and certain young whelps, *to wit*, five young whelps of the other of the said bitches, which afterwards, *to wit*, the same day and year at *M.* aforesaid, died for want of the said bitches to suckle them; and a certain other greyhound bitch, and a certain other bitch of the said *B.* then found at *M.* aforesaid, of the price of 10*l.* shot at, hit, struck, smote and wounded, by means

whereof the laſt mentioned two bitches afterwards, *to wit*, the ſame day and year, at *M.* aforeſaid died; whereby the ſaid *B.* not only loſt the two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five young whelps of the laſt mentioned greyhound bitch, and certain other young whelps, *to wit*, five young whelps of the other of the two laſt mentioned bitches, which afterwards, *to wit*, the ſame day and year, died for want of the two laſt mentioned bitches to ſuckle them, *to wit*, at *M.* aforeſaid, and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſaid ſovereign lord the king that now is; whereby the ſaid *B.* ſaith, that he is injured and damnified to the value of 10*l.* and thereof he bringeth ſuit, &c.

*Plea as to
part, Not
guilty.*

And the aforeſaid *H.* by *S. S.* his attorney cometh and defendeth the force and injury when, &c. *And* as to the coming with force and arms, and the whole trespafs aforeſaid above ſuppoſed to be done, except the ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, ſaith, that he is not guilty; and of this he putteth himſelf upon the country; *and* the ſaid *B.* likewise, &c. — *And* as to the ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, above ſuppoſed to be done, the aforeſaid *H.* ſaith, that the ſaid *B.* ought not to have his aforeſaid action thereof againſt him, becauſe he ſaith, that Sir *W. D.* bart. long before the ſaid time when, &c. and at the ſaid time

*Iſſue.
As to the re-
ſidue, that
the greyhound
uſed to hount
a park, and
to hunt, &c.
the deer, and
being at the
time when,
&c. is reſer-
ved for
that purpoſe,*

time when, *E. c.* was and still is possessed of ^{deft. as park-} and in a certain ancient park called *B. Park* ^{keeper justifies} in *M.* aforefaid, in which faid park long be- ^{the shooting} fore the faid time when, *E. c.* and at the ^{ber.} fame time when, *E. c.* were great numbers of deer, of which park the aforefaid *H.* before the faid time when, *E. c.* and at the faid time when, *E. c.* was keeper, and had the care and custody thereof; and the faid Sir *W.* being fo as aforefaid possessed of the faid park, the faid greyhound bitch at divers times before the faid time when, *E. c.* was used to haunt the faid park and to hunt, chafe and drive the deer there, in order to bite, wound and kill them, to the great hurt and damage of the faid deer; and at the faid time when, *E. c.* was in the aforefaid park for the purpose aforefaid; whereupon the aforefaid *H.* as keeper and servant of the aforefaid Sir *W.* and by his command at the faid time when, *E. c.* in the faid park for the preservation of the faid deer there, did shoot at and kill the faid greyhound bitch there, as it was lawful for him to do; which is the fame shooting at and killing of the faid greyhound bitch in the faid declaration first mentioned, whereof the faid *B.* doth above in that behalf complain againft him; and this he is ready to verify; whereupon he prayeth judgment if the faid *B.* ought to have his aforefaid action thereof againft him, *E. c.*

And the faid *B.* as to the faid plea of him ^{Replication,} the faid *H.* as to the shooting at and killing ^{that he did it} of the faid greyhound bitch in the faid de- ^{de injuria tua} ^{propria abiq;} ^{claration} ^{ali causa,}

claration first mentioned by him the said *H.* committed, above pleaded in bar, saith, that he by any thing above alledged by the said *H.* in pleading ought not to be barred from having his said action thereof against him, because he saith, that true it is, that the said Sir *W. D. bart.* long before the said time when, &c. and at the said time when, &c. was and still is possessed of and in the said park called *B. Park* in *M.* aforesaid, and that within the said park long before the said time when, &c. and also at the same time when, &c. there were a great number of deer, and that the said *H.* before the said time when, &c. and at the said time when, &c. was keeper, and had the care and custody thereof, in manner and form as the said *H.* hath above by his pleading alledged: But the said *B.* further saith, that the said *H.* upon the said 15th day of *January* in the said year of our Lord 1776, at *M.* aforesaid, of his own wrong, and without the rest of the cause by him above alledged, with a gun shot at and killed the said greyhound bitch of the said *B.* in the said declaration first abovementioned, as the said *B.* above thereof complaineth against him; and this he prayeth may be inquired of by the country: And the said *H.* likewise, &c. *Therefore* as well to try this issue as the said other issue between the parties aforesaid above joined, the sheriff is commanded, &c.

Issue.

Venire

award: d.

Herefordshire, } *W.* *H.* late of, *Esq.* and *M.* *Declaration*
to wit, } *W.* his wife, were attach- *in trespass a-*
ed to answer *M. P.* widow, of a plea, where- *gainst baron*
fore the said *M.* the wife of the said *W.* *and feme for*
with force and arms, at *Ross* in the said coun- *taking away*
ty of *H.* took and carried away the corn *corn in the*
in the straw of the said *M. P.* of the value *straw by the*
of 30*l.* there lately found, and converted *wife, and*
and disposed thereof to the use of the said *W.* *converting it*
to the hus-
and other injuries to her did, to the great *band's use.*
damage of the said *M. P.* and against the
peace of our lord the present king: *And*
whereupon the said *M. P.* by *J. B.* her at-
torney complaineth that the said *M.* the
wife of the said *W.* on the 20th day of *Aug-*
ust in the year of our Lord 1776. with
force and arms, at *Ross* aforesaid, the corn
of the said *M. P.* in the straw, that is to
say, 50 cart-loads of wheat in the straw,
50 cart-loads of rye in the straw, and 50
cart-loads of mongcorn in the straw of the
said *M. P.* of the value, *Esq.* there lately
found, took, carried away, and converted
and disposed thereof to the use of the said
W. and other injuries, *Esq.* to the great
damage, *Esq.* and against the peace, *Esq.*
wherefore she saith that she is injured and
hath damage to the value of 40*l.* and there-
of she bringeth this suit, *Esq.*

And the said *W.* and *M.* his wife, by *J. K.* *Plas, as to*
their attorney, come and defend the force *part Not guilt-*
and injury when, *Esq.* *And* as to the com- *ty.*
ing with force and arms and whatever is
against the peace of his present majesty, say
F f that

Issue.

As to the residue, that the plaintiff licensed her to take away the corn, &c.

that the said *M.* the wife of the said *W.* is not guilty thereof as the said *M. P.* hath above complained against them; and thereupon they put themselves upon the country; and the said *M. P.* doth so likewise. And as to the residue of the said trespass above supposed to be done by the said *M.* the wife of the said *W.* the said *W.* and *M.* his wife say, that the said *M. P.* ought not therefore to have her said action against them, because they say that the said *M. P.* before the said time when, *Et. to wit*, on the 19th day of *August* in the year of our Lord 1776. aforesaid, at *Ross* aforesaid, licensed the said *M.* the defendant to take and carry away the said corn, and to convert and dispose thereof to the use of the said *W.* by virtue of which said licence she the said *M.* the defendant afterwards, *to wit*, at the said time when, *Et.* took and carried away the said corn and converted and disposed thereof to the use of the said *W.* her husband, as it was lawful for her to do; which are the residue of the said trespass, of which the said *M. P.* hath above complained against them; and this they are ready to verify: Wherefore they pray judgment if the said *M. P.* ought therefore to have her said action against them, *Et.*

Replication,
de injuria sua
propria.

And the said *M. P.* as to the said plea of the said *W.* and *M.* his wife, as to the residue of the trespass aforesaid, done by the said *M.* the wife of the said *W.* above in bar pleaded, saith that she the said *M. P.* by reason of any thing by the said *W.* and *M.*

in the plea aforesaid above alledged, ought not to be precluded from having her action aforesaid thereof against them, because she the said *M. P.* saith that the said *M.* the wife of the said *W.* on the day and year in the said declaration mentioned, of her own wrong, at *Koss* aforesaid, the said corn in the straw of the said *M. P.* there lately found, took, and carried away and converted and disposed thereof to the use of the said *W.* in manner and form as the said *M. P.* hath above complained; *without this*, that the said *M. P.* licensed the said *M.* the defendant to take and carry away the said corn, and to convert and dispose thereof to the use of the said *W.* her husband, in manner and form as the said *W.* and *M.* his wife in the said plea have above alledged; and this she is ready to verify: Wherefore as the said *W.* and *M.* his wife have above acknowledged the committing of that trespass by the said *M.* the defendant, the said *M. P.* prayeth judgment and her damages aforesaid, occasioned by the committing of that trespass, to be adjudged to her, &c.

And the said *W.* and *M.* his wife say as *Rejoinder*. before, that the said *M. P.* licensed the said *M.* the defendant to take and carry away the said corn and to convert and dispose thereof to the use of the said *W.* her husband, as the said *W.* and *M.* his wife in their said plea have above alledged; and thereupon they put themselves upon the country; and the said *M. P.* likewise: *Therefore, &c. Issue.*

Hil. 36, 37 Car. 2. C. B. 1683.

*Declaration in Yorkfbire, } E. L. late of Marr in the county
trespafs for to wit, } aforefaid widow, was attach-
the recovery of ed to answer G. N gent. in a plea, where-
mesne profits. fore with force and arms, into the manor of
Brownl. Ent. Marr with the appurtenances, and into 20
493. messuages, 10 cottages, 400 acres of arable
land, 400 acres of meadow, and 400 acres of
pasture, with the appurtenances of the said
G. situate, lying and being in Marr, Bently
and Thorpe in Balne, she broke and entered,
and him the said G. from the possession and
occupation of the manor and tenements a-
forefaid, with the appurtenances, from the
second day of October in the 32d year of the
reign of our lord the present king, until the
4th day of March in the 35th year of the
reign of our said lord the present king, ex-
pelled and amoved; and she the said E. the
whole profits of the manor and tenements
aforefaid, from the said 2d day of October
in the 32d year aforefaid until the 4th day
of March in the 35th year aforefaid, to the
use of the said E. had and received; whereby
the said G. the whole profit, benefit and ad-
vantage of the manor and tenements afore-
faid by the whole time aforefaid lost, and the
said G. from the receipt of the profits of the
manor and all the tenements aforefaid by
reason thereof was hindered, and other in-
juries to him did, to the great damage of
the said G. and against the peace of our lord
the present king, &c. And whereupon the
said*

said G. by *W. D.* his attorney complained, that the said *E.* on the 2d day of *October* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. with force and arms, &c. into the manor of [*as before to*] was hindered, and other injuries, &c. to the great damage, &c. and against the peace, &c. Whereupon he saith, that he is the worse, and hath damage to the value of 600*l.* and thereof he bringeth suit, &c.

And the said *E.* by *C. D.* her attorney, *Plea.* cometh and defendeth the force and injury when, &c. And as to coming with force *Not guilty to* and arms, or whatever that is against the *part.* peace of our said lord the present king, and also the whole trespass aforesaid, except in one messuage, 60 acres of land, 40 acres of pasture, and 20 acres of meadow, with the appurtenances in *Marr* aforesaid, parcel of the tenements in the declaration aforesaid specified; and as to any trespass in the said messuage, 60 acres of land, 40 acres of pasture, and 20 acres of meadow, with the appurtenances, in and before the 23d day of *January* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. she the said *E.* saith that she is not guilty thereof; and of this she putteth herself upon the country; and the said G. likewise, &c. *Issue.* And as to the said trespass in the *As to the re-* said one messuage, 60 acres of land, 40 acres *sidue.* of pasture, and 20 acres of meadow, with the appurtenances above specified to be done, the said *E.* saith, that the said G. ought not
to

That long before plaintiff had any thing in the tenements, one E. L. was seised thereof in fee, and devised them to E. wife of T. earl of H. and M. late wife of R. earl of S. and their heirs for ever.

to have or maintain his said action thereof against her, because she saith that she long before the said G. had any thing in the tenements last mentioned, with the appurtenances, *to wit*, on the 10th day of *June* in the year of our Lord 1674, one *E. L.* gent. was seised of the tenements with the appurtenances last mentioned, in his demesne as of fee. And the said *E.* being so thereof seised, before the said time in which, *&c.* to wit, on the 10th day of *August* in the year of our Lord 1674, at *Marr* in the county aforesaid, made his testament and last will in writing, and thereby willed and devised the said tenements with the appurtenances to *E. L.* now the wife of *Theophilus* earl of *Huntingdon*, and *M. L.* deceased, late the wife of *Robert* earl of *Scarfsdale*, and to their heirs for ever; And afterwards, *to wit*, on the day and year last mentioned, there died seised of the said tenements, with the appurtenances in form aforesaid. After whose death, *to wit*, on the 24th day of *January* in the 32d year aforesaid, the said *E.* and *M.* into the said tenements, with the appurtenances last mentioned, entered and were thereof seised in their demesne as of fee, by virtue of the said devise; and being so thereof seised, the said *E.* then at *Marr* aforesaid, took for her husband the said *Theophilus*, earl of *Huntingdon*, and the said *M.* then and there took for her husband the said *Robert*, earl of *Scarfsdale*, whereby the said earl of *Huntingdon* and *E.* in the right of the said *E.* and the said earl of *S.* and *M.* in the right of the said *M.* on the

E. L. dies seised.

E. and M. enter.

E. marries T. earl of H.

M. marries R. earl of S.

the

the said 24th day of *January* in the year ~~1~~
 aforesaid, were seised of the tenements afore-
 said last mentioned, with the appurtenances,
 in their demesne as of fee. *And the said G. Colour given*
 claiming the said tenements, with the ap- *to the plaintiff.*
 purtenances, by colour of a certain deed of *who enters.*
 feoffment to him and his heirs thereof made
 by the said *E. L.* before the day of the mak-
 ing the said testament, when nothing of
 the said tenements, with the appurtenances,
 ever passed into the possession of the said *G.*
 by the said deed of feoffment, after the death
 of the said *E. L.* to wit, on the 24th day of
January in the 32d year aforesaid entered in-
 to the same tenements, with the appurte-
 nances. Upon which said possession of the *Defendant by*
 said *G.* thereof the said *E. L.* now defendant, *command of*
 by the command of the said earl of *H.* and *the earl of H.*
 earl of *S.* on the same 24th day of *January* *and the earl*
 into the said tenements last mentioned, with *of S. enters on*
 the appurtenances, re-entered, and the said *plaintiff.*
G. from the possession and occupation of the
 same tenements, with the appurtenances,
 then expelled and amoved; and the profits
 of the same tenements last mentioned from
 thence for all the residue of the said time in
 the said declaration mentioned had and re-
 ceived, as she well might, which are the
 same residue of the said trespass, whereof the
 said *G.* above now complaineth; and this
 she is ready to verify: Wherefore she pray-
 eth judgment if the said *G.* ought to have
 or maintain his said action thereof against
 her, &c.

And

Replication,
defendant ad
placitum
præſt' admitti
non debet.

In Hil. 32 &
33 Car. 11.

Plaintiff as
leſſee of B. G.
and A. his
ex ſe brought
ejectment a-
gainſt deſen-
dant and ſix
others.

And the ſaid G. ſaith that the ſaid E. ſought not to be admitted to the plea in bar above pleaded, as to the ſaid meſſuage, 60 acres of land, 40 acres of paſture, and 20 acres of meadow, becauſe he ſaith that after the ſaid time in the ſaid declaration mentioned, in which the ſaid treſpaſs in the ſaid declaration above is ſuppoſed to be done by the ſaid E. heretofore, *to wit*, in the term of *St. Hilary* in the 32d and 33d years of the reign of our ſovereign lord *Charles II.* now king of *England*, &c. in the court of our ſaid lord the preſent king before the then juſtices of our ſaid lord the king of the bench (the ſame court being then at *Weſtmiſter* in the county of *M.*) the ſaid E. by the name of *E. L.* late of *Marr*, widow, and one *W. H. G. G. R. H. M. V. J. H.* and *J. S.* were attached to answer the ſaid G. N. in a plea, wherefore with force and arms the manor of *Marr*, with the appurtenances, and 20 meſſuages, 10 cottages, 400 acres of land, 400 acres of meadow, and 400 acres of paſture, with the appurtenances in *Marr*, *Bentley* and *Thorpe* in *Balne* in the county of *York*, which *B. G.* eſq; and *A.* his wife had demised to the ſaid G. for a term which was not then paſſed, they entered, and him the ſaid G. from his ſaid farm ejected, and other injuries to him did, to the great damage of the ſaid G. N. and againſt the peace of our ſaid lord the preſent king; and whereupon the ſaid G. N. by *T. P.* then his attorney complained, that whereas the ſaid *B.* and *A.* on the 1ſt day of *October* in the 32d year of the

the

the reign of our said lord the king at *Maf*^{re} afore-
said, had demised to the said *G. N.* the
manor and tenements afore-
said, with the ap-
purtenances, to have and to hold the manor
and tenements afore-
said, with the appurte-
nances, to the said *G.* and his assigns, from
the feast of *St. Michael* the archangel then
last past, until the full end and term of five
years then next following and fully to be
complete and ended; by virtue of which
said demise the said *G. N.* had entered the
manor and tenements afore-
said, with the ap-
purtenances, and was thereof possessed, and
being so thereof possessed, the said *E. W.*
G. G. R. M. J. and *J.* afterwards, *to wit*,
on the said 1st day of *October* in the 32d
year afore-
said, with force and arms, &c.
the manor and tenements afore-
said, with the
appurtenances, in form afore-
said demised
to the said *G. N.* for a term which was not
then passed, had entered, and him from his
said farm had ejected; and other injuries,
&c. to the great damage, &c. and against
the peace, &c. Wherefore he then said that
he was injured, and had damage to the va-
lue of 100*l.* and thereof he then brought
suit, &c. And the said *E. W. G. G. R. M.* *Who pleaded*
J. and *J.* by *T. L.* then their attorney, came *Not guilty.*
and defended the force and injury when, &c.
and then said that they were in nothing guil-
ty of the trespass and ejectment afore-
said, as
the said *G. N.* above declared against them,
and of that they then put themselves upon
the country; and the said *G. N.* then did
so likewise. And thereupon the said process *Process conti-*
was *nued.*

Nisi prius.

Trial.

Verdict for
plaintiff,

And judgment.

was in such manner continued between the parties aforesaid, in the plea aforesaid, by the jurors being respited between them until from the day of *Easter* in 15 days then next following, unless the justices of our lord the king assigned to take the assises in the county aforesaid, according to the form of the statute, *to wit*, on *Saturday* the 5th day of *March* then next before the said day, *to wit*, from the day of *Easter* in 15 days, at the castle of *York* in the county of *York* aforesaid, had first come; at which said assises, on the day and at the place aforesaid held before Sir *William Dolben*, knt. one of the justices of our said lord the king assigned to hold pleas before the king himself, and Sir *William Gregory*, knt. one of the barons of the exchequer of our said lord the king, justices of our lord the king assigned to take the assises in the county aforesaid of *York*, the said issue was tried, and the jurors then and there chosen, tried and sworn to try the said issue, said upon their oath, that *E. W. G. G. R. M. J.* and *J.* were guilty of the trespass and ejectment aforesaid, in manner and form as the said *G. N.* complaineth against them; *And* thereupon it was in such manner proceeded, that it was considered by the same court of the bench, that the said *G. N.* recovered against the said *E. W. G. G. R. M. J.* and *J.* the possession of his said term in the manor and tenements aforesaid, with the appurtenances, then to come; and that the said *E. W. G. G. R. M. J.* and *J.* should be taken, as by the record of said recovery
now

now remaining in the court of the bench aforesaid more fully appeareth: *And* the said *G. N.* further saith, that the said messuage 60 acres of land, 40 acres of pasture, and 20 acres of meadow, whereof the said *G. N.* now complaineth against the said *E.* are parcel of the messuages, lands and tenements mentioned in the said recovery, and not other nor different: Wherefore the said *G. N.* prayeth judgment if the said *E.* during the said term in the said record mentioned ought to be admitted to the said plea, contrary to the said recovery.

And the said *E.* as at first saith, that the said *T.* earl of *H.* and *E.* his wife, in the right of the said *E.* and the said *R.* earl of *S.* and *M.* his wife, in the right of the said *M.* on the 24th day of *January* in the 32d year aforesaid, and continually afterwards, until the 14th day of *March* in the said 35th year of the reign of the lord *Charles II.* late king of *England*, &c. were seised in their demesne, as of fee, of the tenements aforesaid, with the appurtenances last mentioned, in manner and form aforesaid, as the said *E.* above in pleading hath alledged; and that she the said *E. L.* as servant of the said earls and their wives entered into the tenements aforesaid, with the appurtenances, and held the same as she the said *E. L.* above in pleading hath alledged: Wherefore for that the said *G. N.* hath not denied the said matter pleaded in bar by the said *E.* nor answered thereto, the said *E. L.* prayeth judgment, and

Rejoinder,
That the earls
in right of
their wives
were seised,
and defendant
as their ser-
vant entered,
&c.

And that the said *G. N.* may be precluded from his said action, &c.

Demurrer.

And the said *G.* as to the said plea of the said *E.* above in rejoining pleaded, saith, that the plea in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to preclude the said *G.* from having his said action against the said *E.* to which the said *G.* has no need, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient plea of the said *E.* in this behalf the said *G.* prayeth judgment and his said damages, by the occasion aforesaid, to be adjudged to him, &c.

Joiner.

And the said *E.* saith, that her said plea in manner and form aforesaid above in rejoining pleaded, and the matter therein contained, are good and sufficient in law to preclude the said *G.* from having his said action against the said *E.* Which said plea, and the matter therein contained, the said *E.* is ready to verify and prove, as the court, &c. And because the said *G.* hath not answered to the said plea, nor any ways hitherto denied the same, the said *E.* as at first, prayeth judgment; and that the said *G.* may be precluded from having his said action against the said *E.* &c. And because the justices here will advise themselves of and upon the premises, whereof the said parties have put themselves upon the judgment of the court, before they give judgment thereupon, day is given to the parties aforesaid here, until from
the

Continuance.

the day of *Easter* in 15 days, to hear their judgment thereupon; for that the said justices here are not yet, &c. *And* because it is convenient that one taxation be made of the damages for the whole trespass in one writ specified: *Therefore* as well to try the said issue above joined to be tried by the country, as to inquire of the damages by occasion of the premises, whereof the said parties have put themselves upon the judgment of the court as aforesaid, if judgment thereupon should happen to be given for the said G. *It is commanded* to the sheriff, that he cause to come here on the octave of the purification of the blessed *Mary*, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. *At which day* the jury between the parties aforesaid, in the plea aforesaid above by the country to be tried, was thereupon respited between them here until this day, *to wit*, to the said 15 days of *Easter* then next following, unless the justices of our lord the king assigned to take the assizes in the county aforesaid, by form of the said statute, on *Monday* the 9th. day of *March* last past at the castle of *York* in the county aforesaid shall first come. *And now* here at this day cometh as well the said G. as the said E. by their attornies aforesaid; and the said justices of assize, before whom, &c. sent here their record in these words: *Afterwards*, on the day and at the place within contained, before Sir *Edward Atkins*, knight, one of the barons of the *Exchequer* of our lord the king, and Sir *Robert Wright*, knight,

*Al de cir-
cumstantibus.*

*Ferdia for
the plaintiff.*

one other of the barons of the *Exchequer* of our said lord the king, justices of our said lord the king assigned to take the assizes in the county of *York*, by form of the statute, &c. cometh as well the within named *G. N.* as the within written *E. L.* by their attornies within contained; and the jurors of the jury, whereof mention is within made, being demanded, some of them, *to wit*, *G. R. T. P. G. B. R. T. C. R. W. P.* and *J. S.* came and were sworn on that jury; and because the residue of the jurors of that jury did not appear, *Therefore* others of those standing around, by the sheriff of the county aforesaid hereunto chosen at the request of the said *G. N.* and by the command of the said justices, are added a-new, whose names are affixed in the within written panel, according to the form of the statute in such case made and provided; and the jurors so added a-new, *to wit*, *W. P. M. W. J. H. J. D.* and *J. P.* being demanded, also come, who to speak the truth of the within contents, together with the said other jurors first impanelled and sworn, being chosen, tried and sworn, *As to the* issue between the parties aforesaid within joined, whereof the said *E.* said that she is not guilty thereof, they say upon their oath, that the said *E.* is guilty thereof in manner and form as the said *G.* within complains against her; and they assess the damages of the said *G.* by occasion thereof, over and above his costs and charges by him about his suit in this behalf expended,

pended, to 300 *l.* And as to the residue of *Contingent damages on the demurrer.*
 the trespass within mentioned, whereof the
 said parties have within put themselves on
 the judgment of the court, if it happens that
 judgment therein be given for the said *G.*
 against the said *E.* the said jury assess the da-
 mages of the said *G.* by the occasion of that
 trespass, over and above his costs and char-
 ges by him in and about his suit in this be-
 half expended, to 200 *l.* and for those costs
 and charges to 40 *s.* And because the justices *Continuance.*
 here will further advise themselves of and
 upon all and singular the said premisses be-
 fore they give judgment thereon, day is fur-
 ther given to the parties aforesaid here until
 on the morrow of the Holy Trinity, to hear
 their judgment thereupon, for that the said
 justices here are not yet, &c. At which day *Continuance.*
 here came as well the said *G.* as the said *E.*
 by their attornies aforesaid, and because the
 justices here will further advise themselves
 of and upon all and singular the pre-
 misses aforesaid before they give judg-
 ment thereon, day is further given to the
 said parties here until from the day of St.
Michael in three weeks, to hear their judg-
 ment thereon, for that the said justices here
 are not yet, &c. At which day here cometh *Judgment for the plt. on the demurrer, &c.*
 as well the said *G.* as the said *E.* by their at-
 tornies aforesaid; whereupon all and singular
 the said premisses being seen, and by the
 court here fully understood, it seemeth to
 the said justices that the plea of the said *E.*
 in manner and form aforesaid above in re-
 joining pleaded, and the matter therein con-
 tained,

tained, are not sufficient in law to preclude the said G. from having his said action, as the said G. within hath alledged, *It is considered*, that the said G. recover against the said E. his several damages aforesaid to 500*l.* and the said 40*s.* assessed by the said jury in form aforesaid, and also 28 *l.* to the said G. at his request for his said costs and charges by the court here of increase adjudged, which said damages in the whole amount to 530 *l.* and the said E. be taken, &c.

Affirmed on error.

Declaration in trespass for cutting down a grove which was an ornament and defence to a messuage. Gloucestershire, } C. W. esq; was attached to wit, } to answer T. J. esq; of a plea, wherefore whereas the said T. by the space of seven years now last past was and still is seised in his demesne as of fee, of and in one capital messuage called *Sulley*, and of and in a certain grove of timber trees, to wit, oaks, ashes, elms and beeches, lying contiguous to the same messuage, with the appurtenances, in the parish of *Lydney* in the county aforesaid, which said grove was not only an ornament, but also a defence to the said messuage against winds, storms and tempests, the said C. contriving and intending to deprive the said T. of the benefit and advantage of the said grove, with force and arms entered into the said grove, and cut down and carried away trees to the value of 400 *l.* then growing there, and did other injuries to the said T. to the great damage of the said T. and against the peace of our lord the

the present king, &c. And whereupon the said T. by E. J. who is admitted by the court of our lord the king here to prosecute for the said T. being under the age of 21 years, as next friend of the said T. complaineth, that *whereas* the said T. by the space of seven years now last past was and still is seised in his demesne as of fee of and in one capital messuage called *Sulley*, and of and in a certain grove of timber trees, *to wit*, oaks, ashes, elms and beeches, lying contiguous to the said messuage, with the appurtenances, in the parish of *Lydney*, in the county aforesaid; which said grove was not only an ornament to the said messuage, but also a defence to the said messuage against winds, storms and tempests, the said C. maliciously contriving and intending to deprive the said T. of the benefit and advantage of the said grove, on the — day of, &c. with force and arms entered into the said grove, and cut down and carried away the trees then growing there, *to wit*, 200 oaks, 200 ashes, 200 elms, and 200 beeches, to the value of 400*l.* in continuing the said trespass at divers days and times from the said — day of, &c. until the day of suing forth the original writ of the said T. to wit, the — day of, &c. and other injuries, &c. to the great damage, &c. and against the peace, &c. wherefore he saith, that he is injured and hath damage to the value of 1000*l.* and thereof he bringeth suit, &c.

*Plt. an infant
by prochein
army.*

Eafter 17 Geo. 3.

Common Pleas.

Declaration by an infant in assault and battery. Surrey, *N.* C. late of *Ryegate* in the said county, maltster, was attached to wit, to answer to *W. W.* in a plea wherefore with force and arms he assaulted the said *W.* at *Ryegate* aforesaid in the said county, and beat, wounded and ill treated him, so that his life was greatly despaired of, and did other wrongs to the said *W.* to the great damage of the said *W.* and against the peace of our lord the king, &c. And whereupon the said *W.* who is an infant under the age of twenty-one years, by *J. W.* (his father) his next friend, admitted by the court here for that purpose, complains that the said *N.* on the fifteenth day of *April* in the year of our Lord one thousand seven hundred and seventy seven, with force and arms, *to wit*, swords, staves, knives and whips, assaulted the said *W.* at *Ryegate* aforesaid, in the county aforesaid, and beat, wounded and ill-treated him, so that his life was greatly despaired of, and did other wrongs to the said *W.* to the great damage of the said *W.* and against the peace of our said lord the king; whereby the said *W.* says that he is injured, and hath damage to the value of one hundred pounds. And thereupon he brings suit, &c.

Plea mo'ltiter manus imposita in defence And the said *N.* by *E. S.* his attorney, comes and defends the force and injury, when,



when, &c. and as to the coming with force ^{of his wife,} and arms, or whatever is against the peace ^{the plaintiff} of our said lord the king, says he is not ^{striking, &c.} guilty thereof; and of this he puts himself ^{the horse} upon the country: And as to the residue of ^{whereon she} the said trespass above supposed to be done, ^{rode.} the said *N.* says that the said *W.* ought not to have his said action thereupon against him because he says that at the said time in which, &c. at *Ryegate* aforesaid in the county aforesaid, he the said *N.* was possessed of a certain horse as of his own property, and the said *N.* being so thereof possessed, and — the wife of the said *N.* then and there riding upon the said horse, the said *W.* at the ~~first~~ time in which, &c. at *Ryegate* aforesaid in the county aforesaid, without any reasonable cause, and against the law of the land, with force and arms struck at and beat the said horse then and there being, the said — the said wife of the said *N.* then and there riding upon the said horse as aforesaid, by reason of which the said horse was very much startled and frightened, so that the said — the said wife of the said *N.* was in great danger of being thrown from off the said horse, and the said *W.* then and there several times endeavoured to strike, startle and frighten the said horse; whereupon the said *N.* to prevent the said *W.* from further striking, startling and frightening the said horse, and in defence of his said wife then and there, gently laid his hands upon the said *W.* as it was lawful for him to do, which said gently laying his hands upon the said *W.* for the

Trespass.

cause aforesaid, is the residue of the said trespass, whereupon the said *W.* above complains against him. And this he is ready to verify: Wherefore he prays judgment if the said *W.* ought to have his said action thereupon against him, &c.

Geo. Wilson.

Hilary 18 Geo. III.

Common Pleas.

*Declaration in
trespass for
killing a pig
and a hog.*

Suffex, *J. W.* *R.* late of ——— and *C.* his wife, were attached to answer *J. M.* in a plea, wherefore the said *C.* with force and arms, struck, stabbed and wounded with a spit a * pig and a hog of the said *J.* of the price of forty shillings, at ——— aforesaid, so that the said pig and hog died thereof, and wounded and killed another pig and another hog of the said *J.* of the price of forty shillings there found, and did other wrongs to the said *J.* to the great damage of the said *J.* and against the peace of the lord the king. And whereupon the said *J.* by ——— his attorney complains, that the said *C.* on the tenth day of *September* in the year of our Lord 1778, with force and arms struck, stabbed and wounded with a

* In trespass the writ was *quare bona & catalla sua cepit*: The count was of a cow; on not guilty pleaded verdict *pro quer.* but judgment arrested. *R. Raym.* 4.

spit, a pig and a hog of the said J. of the price of forty shillings at ————aforesaid, so that the said pig and hog died thereof, and wounded and killed another pig and another hog of the said J. of the price of forty shillings, there found, and did other wrongs to the said J. to the great damage of the said J. and against the peace of the said lord the king, whereby the said J. says that he is injured, and hath damage to the value of ten pounds. And thereupon he brings suit, &c.

To which the defendant pleaded the general issue. •

I N D E X.

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of D——. Letters pa-
tent. — *Profert, &c.* Page

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43. Plea in affault by two de-
fendants: As to part, Not
guilty; iffue. As to the re-
fidue, one defendant pleads
Son affault demefne. The
other a fpecial *Son affault*,
viz. that the two defen-
dants were fifters, the
plaintiff and the firft de-
fendant were fighting, the
fecond defendant to pre-
ferve the peace, and to de-
fend her fater, *molliter ma-
nus impofuit*, whereupon
the plaintiff affaulted her,
et fic, &c. Replication to
the plea of the firft defen-
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44. Plea in affault by one de-
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By the other defendant,
Not guilty as to part; iffue.
As to the refidue, plaintiff
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ling houfe, and difturbed
him in the poffiffion there-
of, *Ideo molliter manus im-
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45. Plea in affault and im-
prifonment: To part Not
guilty; iffue. As to the
refidue, defendant keeper

of York gaol, *Ca. fa.* a-
gainft plaintiff, who was
arrefted thercon, and com-
mitted to defendant's cuft-
ody; traverse. Replica-
tion, defendant guilty after
plaintiff difcharged. If fue.

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46. Not guilty in trefpafs
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rer, joinder; *Unica taxatio*.
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bond, &c. Condition for performing covenants in a lease; *Protestando* that the assets are above 64*l.* 17*s.* 6*d.* and defendant hath assets sufficient; says the indenture in the plea, and in the condition, are the same; and that intestate was not indebted to defendant for rent above 30*l.* Demurrer, and judgment for plaintiff. Page 231

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